

Rules and Regulations of the

Temple Fire Fighters’
and
Police Officers’

Civil Service Commission

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49

1. WHEN THAT POSITION HAS BEEN FUNDED, BUT NOT YET CREATED OR AUTHORIZED BY THE CITY’S GOVERNING BODY, OR 49

2. WHEN THERE IS A VACANCY IN AN EXISTING POSITION FOR WHICH NO PROMOTIONAL LIST EXISTS 49

I. AN OFFICER TEMPORARILY ASSIGNED UNDER THIS SUBSECTION HAS NO PROPERTY RIGHT OR INTEREST, IN LAW OR EQUITY, TO CONTINUED EMPLOYMENT IN THE TEMPORARILY ASSIGNED POSITION, AND WILL BE DEMOTED TO THE POSITION (S)HE OCCUPIED PRIOR TO THE TEMPORARY ASSIGNMENT IMMEDIATELY UPON DETERMINATION OF THE OFFICER OCCUPYING THE FIRST POSITION ON THE ELIGIBILITY LIST. 50

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C) ASSIGNMENTS MADE PURSUANT TO THIS RULE ARE EXPRESSLY LIMITED TO SUCH PERIOD OF TIME AS IS NECESSARY FOR THE CITY TO FORMALLY CREATE THE POSITION BY ORDINANCE, OR COMPLETE THE PROCESS OF CREATING A PROMOTIONAL LIST FOR THE POSITION 50

D) A PERSON TEMPORARILY SERVING IN A HIGHER RANK SHALL HAVE FULL AUTHORITY AND RESPONSIBILITY FOR PERFORMING ALL OF THE DUTIES OF THE ASSIGNED RANK FOR THE DURATION OF THE ASSIGNMENT 50

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Rules and Regulations of the Temple Fire Fighters' and Police Officers' Civil Service Commission

General

Section 1. PURPOSE

- 1.1** The following rules represent a complete revision of the Rules and Regulations of the Temple Fire Fighters' and Police Officers' Civil Service Commission. These rules completely repeal and replace all earlier rules approved by the City of Temple Civil Service Commission.
- 1.2** The purpose of these rules is to provide for the local administration of Civil Service in the police and fire departments, and in particular to:
1. (a) prescribe rules and regulations for:
 1. hiring personnel into the Temple Civil Service system;
 2. conducting entry level and promotional examinations;
 2. (b) provide rules and regulations governing disciplinary matters;
 3. (c) provide procedures governing meetings and hearings by the Commission; and
 4. (d) provide general information concerning the rights and benefits of Civil Service employees.
- 1.3** Records of the Civil Service Commission shall be governed by the Texas Public Information Act. Those portions of an employee's personnel file and employment record that are deemed not normally subject to public disclosure under the Texas Public Information Act and the legal precedent interpreting same are specifically exempted from the provision of this paragraph.

SECTION 2. APPLICATION OF THESE RULES

- 2.1** These rules are promulgated in accordance with Chapter 143, Tex. Loc. Govt. Code Ann., (hereinafter Chapter 143) and the terms of the Meet and Confer Agreement between the City of Temple and the Temple Police Association as adopted on October 6, 2016, and apply to all employees appointed in substantial compliance with Chapter 143 holding a

classified position in the police or fire department as shown in the most recently approved classification ordinance approved by the City Council of the City of Temple.

- 2.2** No person shall be discriminated against under these Rules based upon race, gender, creed, religion, color, national origin or any non-disqualifying disability.

SECTION 3. DEFINITIONS

- 3.1** All terms, words or phrases contained in these rules shall be interpreted in harmony with the provisions of Chapter 143, and all subsequent amendments thereto, and the Meet and Confer Agreement between the City of Temple and the Temple Police Association.

The following specific definitions shall also apply:

- a. Chief Executive means the City Manager, who is the officer of the City of Temple with final authority to make appointments to the classified service.
- b. Civil Service Employee is any employee in a classified service position.
- c. Civil Service Rule shall be liberally defined to include a rule, regulation, general order, standard operating procedure or special order applicable to Civil Service employees, whether from Chapter 143, the Meet and Confer Agreement between the City of Temple and the Temple Police Association, the City's Administrative Directives, these Rules and Regulations, Personnel Policies and Procedures Manual, City Charter or the appropriate departmental rules, regulations or directives.
- d. Classification means the title of an individual position in the classified service and also the process by which the proper title and pay grade for each position is determined.
- e. Classified Service means the administrative division of the fire and police department as designated by ordinance of the City Council, and composed of employees who are appointed in substantial compliance with Chapter 143 and the Meet and Confer Agreement between the City of Temple and the Temple Police Association.
- f. Commission means the Fire Fighters' and Police Officers' Civil Service Commission of the City of Temple, Texas.
- g. Convicted means when a defendant has plead guilty, no contest (Nolo), or been found guilty in a trial, regardless of whether:
 1. the sentence is subsequently probated and the person is discharged from probation;
 2. the defendant has received an un-adjudicated or deferred adjudication probation for a criminal offense;
 3. the charging instrument is dismissed and the person is released from all penalties and disabilities resulting from the offense;
 4. the cause has been made the subject of a expunction order; or

- 5. the person is pardoned, unless the pardon is expressly granted for subsequent proof of innocence.
- h. Day means calendar day unless otherwise specified in the statute or rule.
- i. Department Head means the Police Chief or Fire Chief depending on context and usage.
- j. Director or Deputy Director means the Director and Deputy Director of the Fire Fighters' and Police Officers' Civil Service Commission, appointed by the Commission to act in the capacity of secretary to the Commission. The Director or Deputy Director shall be the administrator of the City of Temple Civil Service system. The term Director in these rules will refer to both the Director and the Deputy Director of the Civil Service Commission.
- k. Fire Fighter as used in these rules and regulations shall include Cadet, Probationary, Fire Fighter, Driver, Captain, Deputy Chief, and Assistant Chief.
- l. Police Officer as used in these rules and regulations shall include Cadet, Probationary, Police Officer, Corporal, Sergeant, Lieutenant, and Deputy Chief.
- m. He or His, as used in these rules and regulations, shall be interpreted to mean either masculine or feminine gender.
- n. Business Day means Monday through Friday, 8 a.m. until 5:00 p.m. CST, except legal holidays.

SECTIONS 4-5 (RESERVED)

SECTION 6. CIVIL SERVICE COMMISSION

- 6.1** The Commission consists of three members appointed by the City Manager subject to confirmation by the City Council.
- 6.2** Each member of the Commission holds office for a staggered three-year term and thereafter until a successor is appointed and has qualified. Interim vacancies on the Commission shall be filled for the unexpired term of the member whose position has been vacated.
- 6.3** The Commission may take official action by a majority vote of its members at a properly posted meeting of the Commission at which a quorum of its members are present. A quorum of the Commission shall consist of two members.
- 6.4** Commission meetings will be held in the City Council Chambers at the Municipal Building unless posted for another location in accordance with the Texas Open Meetings Act.
- 6.5** All meetings of the Commission are open to the public except to the extent that executive sessions are allowed under the Texas Open Meetings Act and Chapter 143 of the Texas Local Government Code.
- 6.6** The Commission shall meet at such times as may be required for the proper discharge of their duties. Meetings may be called by the Director, the Chairperson, or any two (2) Commissioners. The Commission shall meet annually in January to elect new officers.

- 6.7** The Director, or designee, shall be responsible for posting the public notices prior to each meeting. Notice of all meetings of the Commission shall conform to the requirements of the Open Meetings Act, which requires that a written agenda be posted outside the Municipal Building at least seventy-two (72) hours prior to the meeting. The Commission may, if necessary, meet with not less than two (2) hours' notice under certain emergency meeting requirements set out in the Open Meetings Act.
- 6.8** The Director, or designee, may, for good cause, cancel a scheduled Commission meeting by writing "Canceled" across the meeting notices posted in all required posting areas. The Director shall report said cause to the Commission.
- 6.9** At the request of the Commission, a tour of the Police or Fire Station(s) may be scheduled.
- 6.10** A request for an item to be added to the Commission's agenda will be considered by the Commission or the Director, who may respond by informing the employee whether the issue is appropriate for the Commission's consideration. If appropriate, the Director, or designee, will place the matter on the Commission's agenda. The Director, or designee, will forward to the Commission a copy of all correspondence and responses made, if applicable.
- 6.11** Disciplinary Appeal hearings shall proceed as set forth in Section 10.16 of these Rules and Regulations.
- 6.12** The Director, or designee, shall be responsible for preparing the minutes of each Commission meeting, obtaining the Chair's signature on the minutes, and distributing the minutes to the Commission for approval. The minutes, other than matters discussed in executive session, shall be available for public inspection as required by the Public Information Act and Chapter 143 of the Local Government Code.
- 6.13** A member of the Civil Service Commission cannot be a relative of a person in a City of Temple classified service position, a Department Head of the Police or Fire Departments, the Director or Deputy Director of the Civil Service Commission, the Chief Executive, or a member of the City Council. Refer to the City of Temple's Nepotism Policy for the definition of a relative.

SECTION 7. RESERVED

SECTION 8. ADOPTION AND PUBLICATIONS OF RULES

- 8.1** The Commission shall publish and adopt local rules governing the proper conduct of Commission business, appointment to and promotion within the classified service, removal or suspension of a fire fighter or police officer, and other matters pertaining to the local implementation of Chapter 143 of the Texas Local Government Code and any effective Meet and Confer Agreement. These rules shall remain in effect until amended or repealed by the Commission in the same manner that the original rules were adopted.
- 8.2** The Director shall keep copies of these rules and regulations for free distribution to members of the Fire and Police Departments who request copies, and for inspection by interested persons.
- 8.3** Newly adopted rules or amendments shall be posted for 7 days after adoption by the Commission.

SECTION 9 (RESERVED)

SECTION 10. COMMISSION APPEAL PROCEDURE

- 10.1** An employee's notice of appeal and request for hearing shall set forth the employee's basis for appeal in compliance with Chapter 143 of the Texas Local Government Code and any effective Meet and Confer Agreement.
- 10.2** The employee's written notice of appeal must be delivered in person, by certified mail, e-mail, or fax so that it is received by the Director no later than 5:00 p.m. on the tenth (10th) calendar day after the date the employee receives a copy of the disciplinary letter. An employee may withdraw his request for an appeal by delivering a written, signed notice of withdrawal to the Director at any time after the appeal is filed. A written, signed notice of withdrawal delivered to the Director will terminate the appeal process.
- 10.3** The Director shall arrange the location and accommodations for all hearings and appeals. Any questions regarding the hearing should be coordinated with the Director.
- 10.4** Failure by an employee to attend a scheduled appeal hearing shall not in itself prevent the hearing from proceeding as scheduled, or prevent the Commission from proceeding to take such action as may be appropriate.
- 10.5** Only one representative of each party is allowed to question any particular witness.
- 10.6** Dissatisfaction with a representative shall not constitute grounds for modification of the final ruling.
- 10.7** The Texas Rules of Civil Procedure, the Texas Rules of Criminal Procedure, and all other rules of court regarding what is commonly known as "discovery" shall not apply to any Civil Service proceedings. Mediation and arbitration rules and processes do not apply to any Civil Service hearings.
- 10.8** Reasonable requests for photocopies of documents from the opposing party should be accommodated. A request for documents from the City which are not considered "public information" under the Public Information Act is not a reasonable request. Items such as Vehicle Accident Review Board and Workers' Compensation Review Board Recommendations, time and attendance records, duty status forms and other similar documents may be provided as long as they are relevant to the employee and the disciplinary action under appeal.
- 10.9** Employees and their representatives may obtain copies of documents contained in the Director's files, pursuant to 143.089(a) Texas Local Government Code, after the employee has signed the appropriate release form(s),
- 10.10** All exhibits of documentary character shall be limited to facts which are relevant and material to the issues involved in the proceedings.
- 10.11** The original exhibit, or a certified copy of each exhibit offered, shall be given to the presiding officer of the Commission. A copy of the exhibit shall be furnished to the opposing counsel or parties. If the exhibit is admitted into evidence, the original or certified copy shall be made a part of the record of the proceeding, but the Commission may grant permission to the

admitting party to withdraw the original and substitute a copy, if such action is deemed appropriate and reasonable.

Hearing Procedures

- 10.12** The presiding officer of the Commission will call the hearing to order at the scheduled time and place.
- 10.13** All parties shall come to the hearing prepared and ready to proceed so as to minimize any disruption of the hearing process. All parties shall bring at least six (6) copies of all documents or exhibits to be considered by the Commission at the hearing, unless there is an extenuating circumstance which requires consideration of a document or exhibit in the interest of justice.
- 10.14** All disciplinary appeal proceedings shall be public hearings except the deliberations of the Commission, which may be conducted in executive session.
- 10.15** The Director shall maintain a clear and accurate record of the proceedings.
- 10.16** Unless otherwise specified, the format for hearings before the Commission shall generally be as follows:
- a. Call to order
 - b. Statement of purpose of the hearing
 - c. Swearing in of witnesses
 - d. City's opening statement
 - e. Employee's opening statement
 - f. City's (Department's) Case
 - 1. Direct testimony of City witness
 - 2. Cross-examination by employee
 - 3. Re-direct
 - 4. Additional questions, if any, by Commission
 - g. Employee's Case
 - 1. Direct testimony of employee's witness
 - 2. Cross-examination by City
 - 3. Re-direct
 - 4. Additional questions, if any, by Commission
 - h. Rebuttal by City/Department, if any
 - 1. Direct testimony of witness

2. Cross-examination by employee
3. Re-direct
4. Additional questions, if any, by Commission
- i. Short argument, summary by City
- j. Short argument, summary by employee
- k. Rebuttal by City
- l. Deliberation by the Commission in executive session
- m. Decision – rendered by vote in open session

SECTION 11. DECISIONS AND RECORDS

- 11.1 Each concurring Commission Member shall sign a decision issued by the Commission.
- 11.2 Each rule, opinion, directive, decision, or order issued by the Commission must be written and constitutes a public record that the Commission shall retain on file.

SECTION 12. DIRECTOR

- 12.1 Upon recommendation of the City Manager, or designee, the Commission shall appoint a Director to administer the Civil Service system.
- 12.2 The Director will act as Secretary to the Commission.
- 12.3 The Director will prepare and recommend rules and regulations for the administration of Chapter 143 of the Local Government Code, which shall become effective after approval by the Civil Service Commission.
- 12.4 The Director shall administer Rules and Regulations of the City of Temple Fire Fighters' and Police Officers' Civil Service Commission and maintain all Civil Service records.

SECTION 13. APPOINTMENT AND REMOVAL OF DEPARTMENT HEAD

- 13.01 The City Manager shall appoint the Police Chief and Fire Chief, subject to confirmation by the City Council.

SECTION 14. DEPARTMENTAL RULES

- 14.1 The Police Chief and the Fire Chief shall each adopt and promulgate written rules, regulations, guidelines, policies and directives pertaining to the operation of their respective departments. A department rule, regulation, guideline, policy or directive promulgated by the Police Chief or Fire Chief may not conflict with these rules or Chapter 143 of the Texas Local Government Code or any effective Meet and Confer Agreement.
- 14.2 Department rules, regulations, guidelines, policies and directives shall become part of the official records of the Commission, and shall be retained in the Director's office. Copies of department rules, regulations, guidelines, policies and directives, and amendments thereto, shall be distributed to each member of the Commission, the Director, and the City Attorney. Electronic or digital copies of Police Department rules shall be made readily available to all

members of the Police Department at the Police Station. Electronic or digital copies of Fire Department rules shall be made readily available to all members of the Fire Department at the Central Fire Station and at each branch fire station.

SECTION 15. ADDITIONAL DEPUTY CHIEF POSITION – POLICE DEPARTMENT

This Section applies solely to the Temple Police Department.

- a. The Department Head is authorized to appoint one (1) Deputy Chief position in addition to the two (2) appointed Deputy Chief positions provided by Section 143.014 of the Texas Local Government Code pursuant to Article 2 of the Meet and Confer Agreement between the City of Temple and the Temple Police Association, ratified and adopted on October 6, 2016.
- b. In addition to the minimum standards required by Sections 143.013(b) and 143.014(d) of the Texas Local Government Code, the person appointed to the additional Deputy Chief position must meet the following criteria:
 - 1) has obtained a minimum educational level of a Bachelor's Degree within two (2) calendar years from appointment;
 - 2) has successfully completed a major law enforcement management school, e.g., the FBI National Academy, Southern Police Institute, or be able to complete this requirement within the first eighteen (18) month of appointment to the position;
 - 3) has served in the rank of Sergeant or above, and have demonstrated effective supervision, leadership, and management of the personnel under their control;
 - 4) has obtained the level of Master Peace Officer Certification by the Texas Commission on Law Enforcement (TCOLE) or its successor.
- c. These minimum standards shall apply to the subsequent appointment of any person to a Deputy Chief position.
- d. Upon a vacancy in a Deputy Chief position, the position will be posted for a period of ten (10) calendar days during which eligible candidates may submit documentation of their qualifications, e.g., resumes, transcripts, certifications, for review by the Department Head.
- e. The final appointment will be made solely at the discretion of the Department Head.
- f. This rule does not provide a basis for appeal of the Department Head's appointment decision.

SECTION 16-20. (RESERVED)

SECTION 21. CLASSIFICATION: EXAMINATION REQUIREMENT

- 21.1** The Commission may, from time to time, make recommendations to the City Council on the proper number and types of classifications in the Fire and Police Departments. The City Council has final responsibility for establishing (by ordinance) the classifications and number of positions in each classification in the Fire and Police Departments. The Commission shall

provide for the classification of all fire fighters and police officers in accordance with the classification ordinance promulgated by the City Council.

- a. The Civil Service Commission establishes the following classifications in the Fire Department:

Probationary Status

Cadet

An employee not certified in this state shall start in this position. Upon successful completion of the requirements for certification as Fire Fighter I & Fire Fighter II by the Texas Commission on Fire Protection (TCFP) and the EMT National Registry, the Cadet shall automatically advance to the Probationary position.

Probationary

Only TCFP Fire Fighter I & Fire Fighter II and Nationally Registered EMT certified personnel in this state shall occupy this position until the end of the probationary status. Upon successful completion of all aspects of the Probationary position, the Probationary employee shall automatically advance to the Fire Fighter classification.

Civil Service Protected or Affected Positions:

Fire Fighter

Once the Fire Chief has certified that the employee has completed the probationary period, employee shall move to the classified position of Fire Fighter.

Driver

A tested position

Captain

A tested position

THE FIRE CHIEF SHALL ASSIGN THE POSITIONS OF TRAINING OFFICER FROM THE CAPTAIN RANK.

Deputy Fire Chief

A tested position

THE FIRE MARSHAL POSITION IS A TESTED POSITION FROM THE DEPUTY CHIEF RANK.

Assistant Fire Chief

Appointed position as provided for in Section 143.014 of the Texas Local Government Code

Fire Chief

As provided for in Section 143.013 of the Texas Local Government Code

- b. The Civil Service Commission establishes the following classifications in the Police Department:

Probationary Status

Cadet

An employee not certified in this state shall start in this position. Upon successful completion of the requirements for certification by the Texas Commission of Law Enforcement (TCOLE), the Cadet shall automatically advance to the Probationary position.

Probationary

Only TCOLE certified personnel in this state shall occupy this position until the end of the probationary status. Upon successful completion of all aspects of the Probationary position, the Probationary employee shall automatically advance to the Police Officer classification.

Civil Service Protected or Affected Positions:

Police Officer

Once the Police Chief has certified that the employee has completed the probationary period, employee shall move to the classified position of Police Officer.

Corporal

A tested position

Sergeant

A tested position

Lieutenant

A tested position

Deputy Chief

As provided for in Chapter 143.014 of the Texas Local Government Code with one (1) additional Deputy Chief position, pursuant to the Meet and Confer Agreement between the City and the Temple Police Association, ratified October 6, 2016.

Police Chief

As provided for in Chapter 143.013 of the Texas Local Government Code

- 21.2** The Police Chief and Fire Chief shall develop job descriptions for each position in each classification in their respective departments. The descriptions shall be interpreted considering the following principles:
- a. The job descriptions are descriptive only and are not restrictive. They shall indicate the kinds of positions that should be allocated to each classification as determined by their duties, responsibilities and qualification requirements. The use of a particular expression or restriction as to duties, qualification requirements or other attributes shall not be held to exclude others not mentioned if such others are similar as to kind and quality.
 - b. Titles, as far as possible, are intended to be suggestive of the kind of work performed by the incumbent of the position and indicative of the rank.
 - c. Any description of duties should be construed as a general description of the kind of work performed by the incumbent of a position that is properly allocated to the classification and not as describing or limiting what the duties of any position may be.
 - d. The examples of work shall be construed as typical tasks only, illustrative of the duties as outlined by the general statement. Examples are not intended to be exhaustive or exclusive, and the fact that the actual tasks performed by the incumbent of a position do not appear therein shall not be taken to mean that the position is necessarily excluded from the class, provided that the tasks constituting the main work or employment are duly covered by the general statement of duties. Any one example of a typical task taken without relation to the general statement of duties and all other parts of the job descriptions shall not be construed as determining the responsibilities of a particular position.

SECTION 22. PHYSICAL REQUIREMENTS AND EXAMINATIONS

- 22.1** Each applicant shall be required to take a work fitness examination and shall be required to submit to such tests as are reasonably necessary and proper to determine the physical fitness of the applicant to perform the essential functions required of the position sought. Applicants who are not capable of performing the essential job functions, with or without reasonable accommodation, will not be appointed. Applicants must meet all of the physical requirements contained in this section.

Physical Requirements for Police Officer Applicants.

- 22.2** Vision. All applicants must meet the following vision standards which are based on recommended vision standards for police officers, Sheedy, et. al., Journal of American Optometric Association, Vol. 54, No. 10, October 1983 (Revised 1985):

- a. Visual Acuity Corrected (with spectacles or contact lenses)
 - i. *Standard* - 20/40 binocular (both eyes open)
 - ii. *Screening referral* - less than 20/100 (binocular) or 20/100 (either eye alone) must be
 - iii. referred for confirmation that candidate meets binocular vision standards

- b. Visual Acuity Uncorrected (without spectacles or contact lenses)
 - i. *Standard* - 20/100 binocular (without correction)
 - ii. *Screening failure* – Worse than 20/100 binocular
 - iii. *Screening referral* - 20/200 or worse with either eye alone must be referred for confirmation that candidate meets binocular vision standard
- c. Binocular Vision
 - i. *Standard* - clear, comfortable binocular vision with good stereopsis at all normal working distances and viewing angles with correction.
 - ii. *Screening referral* - stereo acuity poorer than 80 on Titmus test or equivalent; or distance phoria equal to or exceeding 5 eso or 5xo; or near phoria equal to or exceeding 6 eso or 10 exo.
- d. Color Vision
 - i. *Standard* - normal or anomalous trichromacy (no filters may be used)
 - ii. *Screening referral* - failure on a series of pseudo isochromatic plates
- e. Visual Fields
 - i. *Standard* - normal visual fields
 - ii. *Screening failure* - failure to meet perimetry standard
 - iii. *Screening referral* - failure on a field screener
- f. Pathology
 - i. *Standard* - no pathological conditions which impair or would eventually impair visual performance
 - ii. *Screening referral* - failure on ophthalmoscopic examination

22.3 Hearing. Applicants must have normal hearing of 25 dbs or less at 500 Hz, 100 Hz, 2000 Hz, and 3000 Hz, as defined by the American National Standard Institute (ANSI, 1969).

22.4 Work Fitness Testing. Applicants must pass the following: The agility course is 580 yards from start to finish and is timed. While performing the activities, the applicant will be evaluated by trained members of the Temple Police Department. The following skills will be used while maneuvering through this course:

- Running on various terrains (flat, hard, smooth, even, uneven, uphill, and downhill)
- Pushing objects
- Pulling objects
- Climbing over objects
- Lifting objects
- Striking a dummy – palm heel and knee strike
- Memorizing information
- Identifying subjects

- Using fine dexterity – shooting (simunitions), handcuffing

The Applicant Physical Agility Course is designed to evaluate the applicant's ability to follow directions, memorize information, and function under stressful conditions. The passing time is 4 minutes and 45 seconds (4.45). Engaging the wrong target during the threat identification shooting portion is an automatic failure.

Course Detail

Applicants will wear a police duty belt with a radio, handcuffs, and an inert training gun inside a holster. The applicant begins by sitting in a vehicle. While in the vehicle, the applicant will be given the clothing description of two suspects and told to begin the exercise. The applicant will exit the vehicle and run down the road. The applicant will repeat the suspect description over the radio as he or she is running. The applicant will turn into the range, push open the gate, and run to the dummy. The applicant will then drag the dummy 20 feet, from one cone to the other. Next, the applicant will run to the designated cones and slalom (weave) through them. Then, the applicant will jump over the 4-foot barrier, run through two concrete cylinders, run down to the designated area, and then run up and over the berm.

Once over the berm, the applicant will deliver three palm heel strikes and two knee strikes to the dummy. Next, the applicant will put on eye and ear protection and run down the sidewalk to the 25-yard line, turn right and go to the middle room of the structure on the sidewalk. The applicant will pick up a pistol loaded with simunitions, enter the room and locate the two suspect targets given to the applicant at the staging area. The applicant will engage each target with two shots in the torso. The applicant will then place the weapon on the table and leave the room. The applicant will follow the sidewalk taking the designated route to the end of the course. At the end, the applicant will handcuff and double lock the suspect utilizing the method demonstrated to them prior to the test. Time will stop at this point. Passing time is 4.45 minutes.

Conditions of Employment for Police Officers

22.5 Physical Fitness Test. As a condition of employment, all officers hired after November 18, 1996, shall take and pass an annual physical fitness test (Task Performance review) during the department's annual physical fitness testing. This test will be as outlined below. Officers hired prior to November 18, 1996, must take the annual physical fitness test but they will not have to pass the test as a condition of employment. If an officer is on an approved leave or medical limitation during the time of the annual Task Performance Review, the officer will have thirty (30) days to complete the testing, or at a time that is convenient to the department at its sole discretion, when released back to full duty.

Incumbent officers hired after November 18, 1996, who fail the Task Performance Review at a time when successful completion is a condition of employment shall be subject to the following action:

- a. No more than three remedial tests may be taken in a given test cycle.
- b. The first remedial test must be taken within 30 days from the initial test.
- c. The second remedial test must be taken within 60 days from the first remedial test.
- d. The third remedial test must be taken within 90 days from the second remedial test.

All officers in the Police Department are subject to Section 143.081 of the Local Government Code and Section 81 of these rules.

The agility course is 580 yards from start to finish and is timed. While performing the activities, the officer will be evaluated by trained members of the Temple Police Department. The following skills will be used while maneuvering through this course:

- Running on various terrains (flat, hard, smooth, even, uneven, uphill, and downhill)
- Pushing objects
- Pulling objects
- Climbing over objects
- Lifting objects
- Striking a dummy – palm heel and knee strike
- Memorizing information
- Identifying subjects
- Using fine dexterity – shooting, handcuffing

The Physical Agility Course is designed to evaluate the officer's ability to follow directions, memorize information, and function under stressful conditions. The passing time is 4 minutes and 45 seconds (4.45). Engaging the wrong target during the threat identification shooting portion is an automatic failure.

Course Detail

Officers will wear a police duty belt with a radio, handcuffs, and their duty weapon inside a holster. The officer begins by sitting in a vehicle. While in the vehicle, the officer will be given the clothing description of two suspects and told to begin the exercise. The officer will exit the vehicle and run down the road. The officer will repeat the suspect description over the radio as he or she is running. The officer will turn into the range, push open the gate, and run to the dummy. The officer will then drag the dummy 20 feet, from one cone to the other. Next, the officer will run to the designated cones and slalom (weave) through them. Then, the officer will jump over the 4-foot barrier, run through two concrete cylinders, run down to the designated area, and then run up and over the berm.

Once over the berm, the officer will deliver three palm heel strikes and two knee strikes to the dummy. Next, the officer will put on eye and ear protection and run down the sidewalk to the 25-yard line, turn right and go to the middle room of the structure on the sidewalk. The officer will remove their loaded pistol from its holster, enter the room and locate the two suspect targets given to the officer at the staging area. The officer will engage each target with two shots in the torso. The officer will then re-holster the weapon and leave the room. The officer will follow the sidewalk taking the designated route to the end of the course. At the end, the officer will handcuff and double lock the suspect. Time will stop at this point. Passing time is 4.45 minutes.

22.6 Deleted.

22.7 Tobacco Products. Officers shall not use any tobacco products, including smokeless or chewing tobacco, vaping or other simulated smoking products at any time on or off duty. At no time, on or off duty, will officers use tobacco, including smokeless or chewing tobacco, vaping or other simulated smoking products in a City-owned vehicle, including one assigned to them under the Individual Vehicle Assignment Program, unless specifically authorized by the Department Head. Officers using tobacco products in violation of this rule will be subject to discipline, up to and including termination.

Physical Requirements for Fire Fighter Applicants

22.8 Fire fighter applicants must meet the medical requirements for fire fighters set out in the current NFPA 1582, Standard on Medical Requirements for Fire Fighters, adopted by the National Fire Protection Association. NFPA 1582 is adopted in its entirety including appendices thereto, except for Section 2-4 thereof, which is not adopted at this time.

22.9 Physical Assessment Test (PAT). Testing will be conducted at a designated location by the Fire Chief or his designee. Applicants will wear athletic clothing and shoes, a weighted vest with 50 lbs. of weight distributed to simulate firefighting gear and SCBA, a provided helmet, and a provided pair of gloves. To be considered for employment, applicants must pass all parts of the fitness testing in a continuous manner in the maximum allowable time of five minutes and 29 seconds (5:29) or less

Station #1

Hose Drag

Applicant will drag a simulated, charged hose line for ninety (90) feet. The simulator will consist of ten (10) feet of uncharged hose line linked to a weighted sled box. The box will contain approximately ninety-five (95) pounds of weight to simulate the weight of three (3) sections of charged 1¾-inch hose line and the associated force/weight of friction on an asphalt surface (a total pull force of 65 pounds). Applicant will drag the simulator for ninety (90) feet until both feet cross over the target line.

Station #2

Hose Pull

After completing Station #1, the proctor will lead applicant to a marked square measuring five (5) feet by five (5) feet. The proctor will place the end of a fifty (50) foot section of uncharged hose line just inside the marked square. Applicant will reel in the same simulator that the applicant dragged in Station #1. Applicant must remain inside the marked square at all times. The exercise will end once all fifty (50) feet of hose line have been reeled in and the leading edge of the sled box crosses over the front edge of the marked box. Applicant may use any method to reel the hose line in, as long as the applicant remains inside the marked square throughout the exercise, and does not become entangled in the hose line.

Station #3.

Ladder Heel

Applicant will raise a twenty-four (24) foot extension ladder by 'walking it up' using a hand-over-hand technique. Applicant will then lower the ladder in the reverse manner. Applicant

will secure the ladder to the ground using a pivot system that will keep the base of the ladder in place. Applicant will secure the upper portion of the ladder using a belay system that will prevent the ladder from falling should the applicant lose control. Applicant must 'walk' the ladder all the way to a vertical position, and all the way back down to the ground using the rungs of the ladder. Applicant must not drop the ladder, or grasp the rails of the ladder at any time during the exercise.

Station #4.

Forcible Entry

This activity simulates forcible entry scenarios on the fire ground, such as penetrating a locked door. Applicant will use a ten (10) pound sledge hammer to strike a 'sled target' located three (3) feet off the ground. Applicant will strike the target the number of times necessary to move the sled twelve (12) inches. Applicant must remain on the designated platform at all times while completing this station.

Station #5.

Equipment Carry

Applicant will dismount a simulated gas-powered positive pressure ventilation (PPV) fan weighing approximately forty-five (45) pounds from a mounting platform, carry the fan to a cone marking fifty (50) feet, circle the cone, walk fifty (50) feet back to the mounting platform, and remount the fan onto the platform. The fan must be carried at all times while the applicant is moving, but may be set down at any time to allow the applicant to rest. The fan must be completely remounted within the compartment to complete this station.

Station #6.

Stair Climb

Applicant will climb up and back down a set of stairs equivalent to two (2) conventional flights of stairs, or stories. Applicant will carry a 'high-rise pack' containing two (2) sections of bundled 1¾-inch hose line weighing approximately forty-two (42) pounds. The stair prop consists of a platform supported by two (2) sets of four (4) stairs with railings on both sides that may be used for support.

Applicant will be required to complete seven (7) repetitions in order to complete this station. A single repetition involves climbing up the four (4) stairs and then climbing down the other side of the simulator. The hose pack may be carried in any manner that is comfortable, but must be carried, not dragged, at all times. No skipping of stairs will be allowed. Should a stair be skipped, the proctor will require the applicant to go back and step on the skipped stair to complete the repetition.

Station #7.

Dummy Drag

Applicant will drag a fully-clothed human form dummy weighing one hundred sixty-five (165) pounds. Applicant will drag the dummy twenty-five (25) feet, circle a weighted barrel, and then return twenty-five (25) feet to cross the starting point, for a total distance of fifty (50)

feet. In order to complete this station, both the applicant and the dummy must completely cross the finish line.

Applicant will drag the dummy only by using the pull harness attached to the dummy. Dragging the dummy by any limb, lifting under the dummy's arms, holding onto the dummy's clothing, or carrying the dummy are not acceptable methods of completing this station.

Station #8.

Breach and Pull

Applicant will demonstrate the physical ability to breach and pull a ceiling with a pike pole by performing breach and pull motions using a ceiling simulator. Applicant will position a pike pole in a target diamond on the breach portion of the simulator and, pushing against sixty (60) pounds of resistance, completely open the breach-side hatch door. Applicant will perform three (3) consecutive push repetitions.

Applicant will then hook the pike pole into a metal ring on the simulator, and pull with eighty (80) pounds of force to pull the hatch door completely down. Applicant will perform five (5) consecutive pull repetitions.

One set of three (3) push repetitions followed by five (5) pull repetitions will constitute one (1) push/pull cycle. Applicant will complete four (4) push/pull cycles. The proctor will count out repetitions and provide instructions to ensure compliance. This station involves a highly specific simulator. It is recommended that applicants closely observe the operation of this simulator prior to beginning the test.

SCORING

The PAT is a timed test. Any candidate that completes the course in 5 minutes and 29 seconds (5:29) or less will pass this stage of the selection process. There is no advantage in seeking to complete the test in a time significantly lower than 5:29.

Conditions of Employment for Fire Fighters

22.10 Essential Job Functions Test. As a condition of employment, all fire fighters hired after November 18, 1996, shall take and pass the annual physical assessment test (PAT), outlined below, during the month designated by the Fire Department designates for testing. Fire fighters hired prior to November 18, 1996 must take the annual job function test, but they will not have to pass the test as condition of employment. If a firefighter is on an approved leave or medical limitation during the time of the annual Physical Assessment Test, the firefighter will have thirty days to complete the testing, or at a time that is convenient to the department at its sole discretion, when released back to full duty.

Station #1

Hose Drag

Fire fighter will drag a simulated charged hose line for a distance of ninety (90) feet. The simulator will consist of ten (10) feet of uncharged hose line linked to a weighted sled box. The box will contain approximately ninety-five (95) pounds of weight to simulate the weight of three (3) sections of charged 1 ¾-inch hose line and the associated force/weight of

friction on an asphalt surface (a total pull force of 65 pounds). Fire fighter will drag the simulator for ninety (90) feet until both feet cross over the target line.

Station #2

Hose Pull

After completing Station #1, the proctor will lead fire fighter to a marked square measuring five (5) feet by five (5) feet. The proctor will place the end of a fifty (50) foot section of uncharged hose line just inside the marked square. Fire fighter will reel in the same simulator that the applicant dragged in Station #1. Fire fighter must remain inside the marked square at all times. The exercise will end once all fifty (50) feet of hose line has been reeled in and the leading edge of the sled box crosses over the front edge of the marked box. Fire fighter may use any method to reel the hose line in as long as the applicant remains inside the marked square throughout the exercise and does not become entangled in the hose line.

Station #3.

Ladder Heel

Fire fighter will raise a twenty-four (24) foot extension ladder by 'walking it up' using a hand-over-hand technique. Fire fighter will then lower the ladder in the reverse manner. Fire fighter will secure the ladder to the ground using a pivot system that will keep the base of the ladder in place. Fire fighter will secure the upper portion of the ladder using a belay system that will prevent the ladder from falling should the fire fighter lose control. Fire fighter must 'walk' the ladder all the way to a vertical position, and all the way back down to the ground using the rungs of the ladder. Fire fighter must not drop the ladder, or grasp the rails of the ladder at any time during the exercise.

Station #4.

Forcible Entry

This activity simulates forcible entry scenarios on the fire ground, such as penetrating a locked door. Fire fighter will use a ten (10) pound sledge hammer to strike a 'sled target' located three (3) feet off the ground. Fire fighter will strike the target the number of times necessary to move the sled twelve (12) inches. Fire fighter must remain on the designated platform at all times while completing this station.

Station #5.

Equipment Carry

Fire fighter will dismount a simulated gas-powered positive pressure ventilation (PPV) fan weighing approximately forty-five (45) pounds from a mounting platform, carry the fan to a cone marking fifty (50) feet, circle the cone, walk fifty (50) feet back to the mounting platform, and remount the fan onto the platform. The fan must be carried at all times while the fire fighter is moving, but may be set down at any time to allow the fire fighter to rest. The fan must be completely remounted within the compartment to complete this station.

Station #6.

Stair Climb

Fire fighter will climb up and back down a set of stairs equivalent to two (2) conventional flights of stairs, or stories. Fire fighter will carry a 'high-rise pack' containing two (2) sections of bundled 1¾-inch hose line weighing approximately forty-two (42) pounds. The stair prop consists of a platform supported by two (2) sets of four (4) stairs with railings on both sides that may be used for support.

Fire fighter will be required to complete seven (7) repetitions in order to complete this station. A single repetition involves climbing up the four (4) stairs and then climbing down the other side of the simulator.

The hose pack may be carried in any manner that is comfortable, but must be carried, not dragged, at all times. No skipping of stairs will be allowed. Should a stair be skipped, the proctor will require the fire fighter to go back and step on the skipped stair to complete the repetition.

Station #7

Dummy Drag

Fire fighter will drag a fully-clothed human form dummy weighing one hundred sixty-five (165) pounds. Fire fighter will drag the dummy twenty-five (25) feet, circle a weighted barrel, and then return twenty-five (25) feet to cross the starting point, for a total distance of fifty (50) feet. In order to complete this station, both the fire fighter and the dummy must completely cross the finish line.

Fire fighter will drag the dummy only by using the pull harness attached to the dummy. Dragging the dummy by any limb, lifting under the dummy's arms, holding onto the dummy's clothing, or carrying the dummy are not acceptable methods of completing this station.

Station #8.

Breach and Pull

Fire fighter will demonstrate the physical ability to breach and pull a ceiling with a pike pole by performing breach and pull motions using a ceiling simulator. Fire fighter will position a pike pole in a target diamond on the breach portion of the simulator and, pushing against sixty (60) pounds of resistance, completely open the breach-side hatch door. Fire fighter will perform three (3) consecutive push repetitions. Fire fighter will then hook the pike pole into a metal ring on the simulator, and pull with eighty (80) pounds of force to pull the hatch door completely down. Fire fighter will perform five (5) consecutive pull repetitions.

One set of three (3) push repetitions followed by five (5) pull repetitions will constitute one (1) push/pull cycle. Fire fighter will complete four (4) push/pull cycles. The proctor will count out repetitions and provide instructions to ensure compliance. This station involves a highly specific simulator. It is recommended that fire fighters closely observe the operation of this simulator prior to beginning the test.

Fire fighters hired after November 18, 1996, who do not pass all portions of the PAT shall be given remedial counseling and training for three months, and then retested. Fire fighters must pass all parts of the second PAT. Fire fighters who do not pass all parts of the second PAT shall be subject to the Fitness for Duty Assessment process, pursuant to Section 143.081, Texas Local Government Code, and Section 81 of these rules.

22.11 Deleted

22.12 Tobacco Products. As a condition of employment, all fire fighters hired after November 18, 1996, shall not use any tobacco products at any time while employed by the City of Temple, both on and off duty. Fire fighters who use tobacco products will be subject to discipline, up to and including termination, for violating this policy. For purposes of this section, “tobacco products” includes: chewing tobacco, smokeless tobacco, simulated smoking devices, and vaping devices.

SECTION 23. ELIGIBILITY FOR BEGINNING POSITIONS

23.1 Eligibility requirements for Police Officers. The City will consider for appointment to an entry level position in the Temple Police Department only individuals meeting the following minimum requirements:

- a. achieve a minimum passing score of seventy percent (70%) on the written examination;
- b. pass the physical agility/assessment test;
- c. pass a background investigation conducted and evaluated in accordance with the general guidelines recognized by the Texas Commission on Law Enforcement or other reputable background investigation authorities;
- d. pass an oral interview conducted and evaluated in accordance with the general guidelines as contained in the “Oral Interview Procedure Manual,” written and promulgated by the Texas Commission on Law Enforcement or other reputable interview technique authorities;
- e. pass a pre-job offer polygraph examination which includes questions concerning, but not limited to, work history, criminal activity, credit history, and drug or alcohol usage;
- f. successfully complete a post-job offer, conditional work fitness medical examination that includes a physician certification that the applicant is free of drug dependency and does not use illegal drugs;
- g. successfully complete a post-job offer, conditional psychological test as required by the Texas Commission on Law Enforcement standards that includes certification by a licensed psychologist or psychiatrist that the candidate is in satisfactory psychological and emotional health;
- h. **Age:**
 1. be at least twenty-one (21) years of age at the time the applicant presents himself/herself to TCOLE for the State licensing exam, and not be forty-five

(45) years of age at the time the applicant passes the written exam and the physical assessment/agility testing, or

2. be at least twenty (20) years of age and meet the following criteria:
 - a. will turn twenty-one (21) years of age by academy graduation date;
 - b. successfully completes all phases of the selection process, and
 - c. obtains approval from the Chief of Police.

i. **Education:**

1. be a graduate of an accredited high school or have an equivalency certificate issued by the Texas Education Agency, or the equivalent agency in another state or the District of Columbia, or
 2. have 12 hours of higher education with at least a 2.0 grade point average.
- j. if a veteran, have an honorable discharge from the Armed Forces of the United States after a minimum of 24 months of active duty, and be eligible for re-enlistment;
 - k. have a valid driver's license issued by the State of Texas;
 - l. be able to proficiently read, write, and fluently speak the English language;
 - m. shall not be prohibited from carrying a firearm or possessing ammunition;
 - o. be a citizen of the United States by birth or naturalization;
 - p. be of good moral character; and
 - q. meet all requirements of the Texas Commission on Law Enforcement for licensing of peace officers.

23.2 Eligibility requirements for entry level Fire Fighter positions. The City will consider for appointment to an entry-level position in the Temple Fire Department only individuals meeting the following minimum requirements:

- a. achieve a minimum passing score of seventy percent (70%) on the written examination;
- b. pass the physical assessment test;
- c. pass a background investigation;
- d. successfully complete an oral interview with an oral interview board consisting of Fire Department personnel as designated by the Fire Chief;
- e. pass a psychological examination;
- f. successfully complete a conditional, post-job offer work fitness medical examination that includes a physician certification that the applicant is free of drug dependency and does not use illegal drugs;

- g. be at least eighteen (18) years of age, and not be thirty-six (36) years of age or older at the time the applicant passes the written examination and the physical assessment test;
- h. be a graduate of an accredited high school or have an equivalency certificate certified by the Texas Education Agency;
- i. pass a pre-job offer polygraph examination which includes questions concerning but not limited to, work history, criminal activity, credit history, and drug or alcohol usage;
- j. have a valid Texas driver's license at the date of hire;
- k. be a citizen of the United States by birth or naturalization
- l. be able to proficiently read, write, and speak the English language;
- m. be of good moral character;
- n. be certified or certifiable within a year of appointment, as a Fire Fighter I & Firefighter II as established by the Texas Commission on Fire Protection and the Texas Department of State Health Services; and
- o. be certified at least as an EMT-Basic, or certifiable within a year of appointment, by the Texas Department of State Health Services.

23.3 Causes for Disqualification. The City of Temple may reject an applicant for the Police Department or the Fire Department, if the applicant:

- a. is not a citizen of the United States of America;
- b. cannot proficiently read, write, or fluently speak the English language;
- c. is found to lack any of the qualifications set forth in the published notice inviting application to the departments or fails to meet the minimum qualification for the position established in these rules;
- d. makes or knowingly attempts to make a false statement in any material fact in his application, examination, or appointment;
- e. is found to have an unacceptable personal history, financial history, educational performance, unemployment, military service (if applicable), general reputation, interpersonal skills, ability to read, legibly and correctly write and/or fluently speak English or any combination of some or all of the following areas: 1) failure to pay just debts; 2) excessive indebtedness; 3) unstable employment; 4) educational suspensions; 5) military disciplinary actions; 6) problems relating to others; 7) poor interpersonal relationships; 8) lack of dependability; or 9) unacceptable conversational, writing or reading skills;
- f. fails to cooperate fully in the employment process by such acts as failure to complete the Personal History Statement in accordance with the instructions, missing appointments, failing to return necessary paperwork, failing to notify the Director, Police Department or Fire Department of current telephone numbers or addresses,

failing to cooperate in the background check required of each applicant, or otherwise failing to complete the employment process;

- g. is unable to comply with all applicable City of Temple policies which set forth requirements for applicants seeking employment with the City;
- h. is unwilling to sign the “Condition of Employment” form maintained by the Director, or
- i. has a record of unsatisfactory prior service in a prior position, i.e., applicant was indefinitely suspended, resigned during a suspension, or resigned to avoid, or in lieu of, a suspension or investigation.

23.4 Automatic Disqualification. The conditions, circumstances or history described in this subsection will result in the automatic disqualification of an applicant.

a. Felonies.

- 1. evidence of the commission of a felony offense within ten (10) years of the entrance exam;
- 2. Applicant has been convicted of, or received deferred adjudication or pre-trial diversion for any felony offense under state or federal law, to include the Uniform Code of Military Justice (UCMJ).
- 3. Applicant is currently, or has been, on court ordered community supervision or probation for any criminal offense classified as a felony under the Texas Penal code, or
- 4. Applicant is under indictment for any criminal offense.

b. Misdemeanors.

- 1. Applicant has been convicted of or has a pending charge for any offense classified as a Class B misdemeanor under the Texas Penal Code within ten (10) years prior to the date of the entrance exam;
- 2. Applicant is currently on court ordered community supervision or probation for a Class B misdemeanor, or has been on court ordered community supervision or probation for a Class B misdemeanor within ten (10) years prior to the date of the entrance exam;
- 3. Applicant has been convicted of an offense classified as a Class A misdemeanor under the Texas Penal Code;
- 4. Applicant is currently, or has previously been, on court ordered community supervision or probation for a Class A misdemeanor, or
- 5. Applicant has been convicted of, or has a pending charge for any offense classified as Class C misdemeanors under the Texas Penal Code, and involving moral turpitude, within five (5) years prior to the date of the entrance examination, including:

Class C Misdemeanors

§42.01 Texas Penal Code - Disorderly Conduct, indecent exposure, peeping

§39.02 Texas Penal Code – Theft by Public Servant

§31.03 Texas Penal Code - Theft under \$100.00

EXCEPTION:

The Chief of Police may elect, as outlined in TCOLE Rule 217.1(a)(6)(B), to make application to TCOLE requesting an applicant waiver.

- c. Offenses involving driving while intoxicated (DWI) or under the influence (DUI) of alcoholic beverage or other intoxicant (DUID).
 - 1. Applicant has been convicted of, or placed on probation or court ordered community supervision, for a DUI, DWI, or DUID that is classified as a Class B misdemeanor under the Texas Penal Code within ten (10) years prior to the date of the entrance exam;
 - 2. Applicant has been convicted of, or placed on probation or court ordered community supervision, for a DUI, DWI or DUID that is classified as a Class A misdemeanor or greater under the Texas Penal Code, or
 - 3. Applicant has been charged with, is on probation/parole, court ordered community supervision, or under indictment for DUI, DWI, or DUID on the date of the entrance examination, or prior to being offered a position.
- d. Probation or parole status.
 - 1. Applicant is currently on probation or parole for any criminal offense on the date of the entrance examination, or prior to being offered a position;
 - 2. Applicant has been convicted of a crime and subsequently placed on probation (including deferred adjudication) on the date of the entrance exam or prior to being offered a position, or
 - 3. Applicant has been pardoned for the offense, unless the pardon is expressly granted on the basis of subsequent proof of innocence.
- e. Use of narcotics or controlled substance.
 - 1. Applicant has illegally used any controlled substance or dangerous drug classified as a misdemeanor under the Texas Penal Code within the five (5) years prior to the date of the written examination, with the exception of a one-time “experimentation use” of any such substance at least two (2) years prior to the date of the written examination;
 - 2. Applicant has used any controlled substance or dangerous drug classified as a felony violation under the Texas Penal Code within ten (10) years prior to the date of the written examination, with the exception of a one-time “experimentation” use of any such substance at least five (5) years prior to the date of the written examination;

3. Applicant was convicted of, or is currently on probation or court ordered community supervision for, any criminal offense classified as a Class A misdemeanor under the Texas Health and Safety Code, or
 4. Applicant has illegally furnished, e.g., sold, delivered, gave, any controlled substance to another person within ten (10) years prior to the date of the written examination.
- f. Military history.
- Applicant received a less than honorable discharge from military service, or an honorable discharge with any condition or conditions that are less than honorable.
- g. Driving record.
1. Applicant was convicted of four (4) or more traffic citations for moving violations within the five (5) years preceding employment; three (3) or more moving violations within the two (2) years preceding employment, or two (2) or more moving violations within the twelve (12) month period prior to employment. Evidence of traffic violations includes, but is not limited to: convictions, “no contest” pleas, dismissal for defensive driving purposes, receiving deferred adjudication, and any current charges;
 2. Applicant has been determined to be at fault in two (2) or more traffic accidents within three (3) years prior to employment;
 3. Applicant has been convicted of moving violations and determined to be at fault in traffic accidents in a combination of violations and accidents of three (3) or more within the preceding three (3) years; or
 4. If the applicant’s driver’s license has been suspended or revoked for any reason during the five (5) year period prior to employment, the applicant will be disqualified from testing for a period of five (5) years from the last day of the revocation or suspension. If the applicant’s driver’s license has been suspended or revoked because of a one-time violation of any one (1) of the sections listed below, the applicant will be disqualified from testing for a period of two (2) years from the last day of the suspension or revocation:
 - a) Texas Alcoholic Beverage Code Section 106.02 (Purchase by Minor)
 - b) Texas Alcoholic Beverage Code Section 106.025 (Attempt to Purchase by Minor)
 - c) Texas Alcoholic Beverage Code Section 106.04 (Consumption by Minor)
 - d) Texas Alcoholic Beverage Code Section 106.05 (Possession by Minor)
 - e) Texas Alcoholic Beverage Code Section 106.07 (Misrepresent Age by Minor)

- f) Texas Health and Safety Code Section 161.252 (Tobacco Violations by Minor)
 - g) Texas Penal Code 49.02 (Public Intoxication by Minor)
 - h) Driver Surcharge Violation for No Insurance Violation
 - i) Driver Surcharge Violation for No Driver's License Violation
 - j) Failure to Appear on a Citation Violation
- h) Unsatisfactory prior service.
 - 1. Applicant was indefinitely suspended, resigned during a suspension, or resigned in lieu of suspension or investigation from a prior position.
 - 2. Applicant with prior experience in another department has identified by a prosecutor as a person not eligible to testify in a court of law pursuant the effect of the Texas Brady/Morton Act.
- i. Prior disqualification by the Temple Police Department or Temple Fire Department
 - 1. Applicant was disqualified for employment by the Department at least two (2) times during the twenty-four (24) months prior to application.
 - 2. Applicant disqualified under this rule is eligible for employment consideration by the Department three (3) years after the date of the last disqualification.
- j. Failure to file application and necessary paperwork
 - 1. Applicant failed to complete application in the manner prescribed in the Notice of Examination, or to timely file the application with the Director;
 - 2. Applicant failed to return the completed background information packet to the Director by the deadline established in the Notice of Examination.
- k. Failure to meet one or more of the minimum requirements expressed in these rules or the regulations of the Texas Commission on Law Enforcement Standards and Education, or the Texas Commission on Fire Protection.

SECTION 24. (RESERVED)

SECTION 25. ENTRANCE EXAM

- 25.1** The Director shall keep all eligibility lists for applicants for original positions in the Police Department and Fire Department in effect for one (1) year. The Director shall provide in the eligibility list announcement that the list shall remain in effect for the time specified by these rules, or until all names have been referred to the appropriate department, whichever occurs sooner.
- 25.2** Any person shall be considered for appointment to a vacancy in the classified service who has filed an application with the Director in the manner specified in these rules, and upon the form furnished by the Director, and whose application has not been rejected by the Director for cause in accordance with the provisions of these rules. The applicant shall make

the application in his own handwriting or in type written form, and shall certify the correctness of the facts.

- 25.3** The Director may, because of a small number of applicants for any position, or for any other good and sufficient reason, postpone an examination to a later date. Any examination may be canceled by the Director if the examination becomes unnecessary due to a change in the personnel requirements of the classified service.
- 25.4** No letters of recommendation or endorsements, other than those required by the rules, shall be considered in rating any competitor, unless called for in connection with the examination.
- 25.5** Five points shall be added to the examination grade of any applicant who served in the United States armed forces for not less than one year on active duty, received an honorable discharge, and who made a passing grade on the examination.
- 25.6** To be eligible to take the exam, the applicant's registration form and other required forms must be received by the Human Resources Department by the closing time and date established by the Director, and set out in the Notice of Examination.
- 25.7** The certified eligibility list in the Police Department will be established by using the applicant's total score plus the five (5) points for "honorable discharge" after the applicant has passed the physical assessment/agility testing and B-PAD (if applicable). The certified eligibility list in the Fire Department will be established by using the applicant's total score, plus the five points for "honorable discharge."
- 25.8** In the event that two or more applicants make identical total final grades, the order of their rank on the eligibility list shall be determined using the following procedures:
1. raw score on the written test;
 2. the date the registration form is turned in to the Human Resources Department, with the earliest date taking priority;
 3. the time the registration form was turned in to the Human Resources Department, with the earliest time of day taking priority;
 4. The Director shall place the names of the applicants involved in the tie into a container, and draw out as many names as necessary to break the tie. The names shall be placed on the eligibility list in the order in which they are drawn.
- 25.9** Any person requesting an accommodation under the Americans with Disability Act in taking the entrance exam must request the accommodation in writing, and present the documentation to the Director at least three (3) weeks prior to the closing date for application.
- 25.10** An applicant requesting an accommodation must present documentation of a specific disability which would negatively impact applicant's performance on the exam. The documentation must be on letterhead stationery from a medical or educational professional who is familiar with the individual's disability. The documentation must be dated within the three (3) years prior to the date of the entrance exam.

- 25.11** Applicants with disabilities are entitled to, and have the responsibility to meet, the same deadlines for application and submission of documentation established for non-disabled individuals.
- 25.12** The City of Temple will offer reasonable accommodations for the written entrance exam for those persons with documented disabilities.
- 25.13** Requests for accommodations on the written examination will be reviewed on a case by case basis.

Entrance Examination Administration Procedures.

- 25.14** The use of tobacco products, including smokeless tobacco, vaping and simulated smoking devices, is prohibited at all times in the testing area.
- 25.15** The test monitors will verify each applicant's identification by viewing a photo I.D. of the applicant.
- 25.16** No applicant will be admitted after the test begins.
- 25.17** Proof of honorable discharge from military service must be provided to the Director no later than the start of the written test. Any discharge other than "honorable discharge" is not creditable for the purpose of this section. A copy of a DD214 stating "honorable discharge" is the only acceptable proof of "honorable discharge." The copy of the DD214 will become the property of the City of Temple, and will not be returned to the applicant or used at a later date for proof of "honorable discharge" if the applicant files a later application to take the test again.
- 25.18** The test administrator may select a reasonable number of persons employed by the City to assist in the administration, monitoring, and grading of an entrance examination.
- 25.19** All examinations will be administered in the presence of all other applicants for such positions. An applicant may not take the examination unless at least one other applicant takes the examination.
- 25.20** Any person taking an entrance examination who uses, or attempts to use, an unfair or deceitful means to pass the examination will have his or her examination voided.
- 25.21** No examinee will be readmitted to the examination after he/she has withdrawn or left the place of examination without the examination administrator's consent.
- 25.22** All original papers, applications, examination paper and questions, certificates, etc., are the property of the Commission and will not be returned to the applicant or copied for the applicant.
- 25.23** The test administrator will bring to the testing site all materials necessary for the applicant to take the examination.
- 25.24** The examinee is prohibited from bringing any workbooks, papers, calculators or other similar items into the testing site.

SECTION 26. PROCEDURE FOR FILLING BEGINNING POSITIONS.

- 26.1** When an opening exists in the Department, the Chief of the Department will request the appropriate number of applicants to fill the vacant position(s) in the Department. If only one vacancy exists, the Director will send the City Manager, or his designee, the names of the three (3) persons having the highest position on the eligibility list. If more than one vacancy exists, the Director will send the names of the three (3) persons having the highest position on the eligibility list for each vacancy.
- 26.2** Applicants who are selected to be appointed to fill a vacant position in the Police Department or the Fire Department will be appointed by the City Manager, or his designee, in the order in which they appear on the eligibility list, unless there is a valid reason to pass over the applicant.
- 26.3** Reasons for passing over an applicant may include, but are not limited to, the following:
- a. does not meet minimum qualifications for the position;
 - b. acts showing lack of good moral character;
 - c. failure to complete or satisfactorily meet the requirements of any part of the selection process;
 - d. unfit mentally or physically to perform the essential job duties for a police officer or fire fighter with the City of Temple;
 - e. has illegally used or sold any illicit substance;
 - f. fails to meet the requirements of the City of Temple Drug and Alcohol Policy;
 - g. fails to meet the requirements of the City of Temple Licensing Criteria to Obtain/ Maintain City Vehicle Driving Privileges Policy;
 - h. has been found guilty of, or admitted to, any felony or misdemeanor involving theft, moral turpitude, or conduct unbecoming a member of the Police Department or Fire Department;
 - i. has been dismissed from public service for misconduct, or resigned in lieu of termination;
 - j. has intentionally made false statements, or practiced, or used any form of deception or fraud during any part of the registration, examination, application, or selection process;
 - k. cannot proficiently read, write and speak the English language;
 - l. cannot orally communicate in a professional and intelligent manner;
 - m. has a history of unstable work for no valid reason acceptable to the Police Chief or the Fire Chief, whichever is applicable;
 - n. past conduct that would be inconsistent with a police officer's or fire fighter's job duties; or
 - o. Department is able to demonstrate a hardship, and may request to pass over an uncertified applicant in favor of appointment of a certified applicant.

26.4 Lateral Entry Program

The provisions of this rule apply solely to certified members of the Police Department.

- a. To be eligible for hiring under this rule, an applicant must:
 1. have a current TCOLE license;
 2. be currently employed with a law enforcement agency;
 3. have an honorable standing within their current department;
 4. not be under any type of investigation with their current department;
 5. have three (3) or more years of experience with a municipal, county, or state law enforcement agency in a community comparable in size and population to the City of Temple;
 6. take and pass the locally given Civil Service exam, and
 7. complete and pass a background investigation, and the City of Temple hiring process.
- b. In addition to the above, the probationary officer, once hired, must:
 1. Successfully complete a modified Field Training Program of not less than eight (8) weeks, and
 2. Successfully complete a twelve (12) month probationary period.
- c. The candidate will not have to attend the full training academy.
- d. The Department Head's final determination regarding whether an applicant meets the Lateral Entry Program criteria shall be final. The decision is not subject to appeal to the Commission, and shall not be the basis of a grievance under the Meet and Confer Agreement between the City of Temple and the Temple Police Association.
- e.. Guidelines
 1. An eligibility list for lateral hiring applicants shall be maintained in addition to an entry level eligibility list.
 2. The score to be placed on the lateral eligibility list for each lateral applicant shall be the applicant's score from the locally given Civil Service exam. This score shall be used to rank applicant on the lateral eligibility list.
 3. The Department Head may give preference in selection to any person on the lateral eligibility list based on the applicant's years of experience and type of experience.
 4. The lateral eligibility list shall expire at the discretion of the Department Head.

5. To fill a vacant position within the Department, the Department Head may select an applicant from the lateral eligibility list, or follow the process defined in section 143.026 of the Texas Local Government Code.
 6. The Lateral Entry Program is for pay purposes only, and actual work experience in another law enforcement agency will not be considered for promotional eligibility purposes.
 7. Seniority will be based on the applicant's date of hire within the Department. No credit for prior service outside the Department will be granted for seniority purposes.
- f. This rule is specifically intended to supersede Chapter 143 of the Texas Local Government Code pursuant to the terms of the Meet and Confer Agreement between the City of Temple and the Temple Police Association.

SECTION 27. PROBATIONARY PERIOD

- 27.1** Police Officer applicants who are already licensed/certified as a Police Officer by the Texas Commission on Law Enforcement, and Fire Fighter applicants who are already licensed/certified as a Fire Fighter I and Fire Fighter II by the Texas Commission on Fire Protection and as an EMT by the Texas Department of State Health Services will serve a one (1) year probationary period from the date of employment with the department. If a probationary officer or firefighter is on an approved leave or light duty assignment which precludes performing the full duties of their position for longer than fourteen (14) days, the officer's or firefighter's probationary period will freeze at that point and will resume at the point left off, when the employee returns to duty.
- 27.2** Police Officer applicants who must attend a police academy to obtain license/ certification by the Texas Commission on Law Enforcement, and Fire Fighter applicants who must attend a fire academy to obtain Fire Fighter I and Fire Fighter II license/ certification by the Texas Commission on Fire Protection will serve up to eighteen (18) months of a probationary period from the date of employment with the department. If a probationary officer or firefighter is on an approved leave or light duty assignment for longer than fourteen (14) days, the officer's or firefighter's probationary period will be suspended at that point. When the fire fighter or police officer returns to full duty, the probationary period will resume at the point left off.
- 27.3** Probationary employees will not be entitled to:
- a. specific charges filed against them before they can be terminated;
 - b. a disciplinary appeal hearing before the Civil Service Commission or a Third Party Hearing Examiner;
 - c. appeal of a disciplinary decision to District Court in accordance with rights afforded to Civil Service employees pursuant to Chapter 143 of the Local Government Code.
- 27.4** A probationary employee is not protected or covered under Civil Service and is subject to peremptory discharge under the City of Temple Personnel Policies and Procedures, departmental rules and regulations, and the City Charter.

- 27.5** Cadet Police Officer and Fire Fighter candidates whose Academy and licensing expenses were paid by the Temple Police Department or Temple Fire and Rescue Department shall reimburse the training and licensure costs, on a prorated basis over a period of three (3) years, if they voluntarily separate from employment within three years after achieving licensure. At the time of separation, the prorated amount will be deducted from the employee's final payment for accrued sick, vacation, holiday or compensatory time, as necessary.

SECTION 28. ELIGIBILITY FOR PROMOTION

- 28.1** A fire fighter must meet the requirements set forth in Chapter 143.028 and 143.030 of the Texas Local Government Code to be eligible to take a promotional examination.
- 28.2** A police officer must meet the requirements set forth in Chapter 143.028 and 143.031 of the Texas Local Government Code to be eligible to take a promotional examination.
- 28.3** In any classification, at least one more person than the number of vacancies at the time of test registration must be eligible to take a promotion eligibility examination for that classification.
- 28.4** When less than one more eligible person than the number of vacancies in a Fire Department classification exists at the time of test registration, the eligibility requirements must be lowered as set forth in Chapter 143.030 of the Texas Local Government Code.
- 28.5** When less than one more eligible person than the number of vacancies in a Police Department classification exists at the time of test registration, the eligibility requirements must be lowered as set forth in Chapter 143.031 of the Texas Local Government Code.
- 28.6** When three or more eligible personnel exist within a classification, but less than one person more than the number of vacancies at the time of test registration applies to take a promotion eligibility examination, or presents himself/herself to take the examination, the promotional examination eligibility requirements must be lowered as set forth in Chapter 143.030 or 143.031, as applicable, of the Texas Local Government Code.
- 28.7** When no personnel pass the written promotional examination and alternate promotional system, where applicable, and an eligibility list cannot be established, the eligibility requirements to take the promotional examination must be lowered as set forth in Chapter 143.030 or 143.031, as applicable, of the Texas Local Government Code.
- 28.8** The two-year eligibility requirement to take a promotional examination will be determined based on the posted date of the examination.
- 28.9** All personnel eligible as of the date of a posted examination, and who desire to take the examination, will make application with the Director by the closing date set by the Director. Application must be made in writing on a form provided by the Director.

SECTION 29. PROMOTIONAL EXAMINATION NOTICE

- 29.1** Posting and notice of promotional examinations, and study materials for the promotional examinations will be in accordance with Chapter 143 of the Texas Local Government Code and these rules.
- 29.2** If less than one eligible person more than the number of vacancies at the time of test registration applies or presents himself/herself to take a posted examination, then the test shall be re-posted with amended requirements lowering eligibility to applicants with less than two years' service in the classification immediately below the vacant position. If there is still an insufficient number of examination applicants, the Commission may open the examination to persons with at least two years' service in the second lower classification, as set forth in Chapter 143.030 of the Texas Local Government Code.
- 29.3** The Commission may, because of the small number of applicants for any position, or because of any other good and sufficient reason, postpone an examination to a later date.
- 29.4** Any examination may be canceled by the Commission if the examination becomes unnecessary because of a change in the personnel requirements of the classified service.

SECTION 30. ELIGIBILITY FOR FIRE DEPARTMENT PROMOTIONAL EXAMINATION

- 30.01** A fire fighter must meet the requirements set forth in Chapter 143.028 and 143.030 of the Texas Local Government Code to be eligible to take a promotional examination.

SECTION 31. ELIGIBILITY FOR POLICE DEPARTMENT PROMOTIONAL EXAMINATION

- 31.01** A police officer must meet the requirements set forth in Chapter 143.028 and 143.031 of the Texas Local Government Code to be eligible to take a promotional examination.

SECTION 32. PROMOTIONAL EXAMINATION PROCEDURES

- 32.1** The Director will take appropriate steps to ensure that all promotional eligibility examination test questions are prepared by personnel or organizations that possess the level of expertise necessary to prepare test questions of an appropriate nature and level for the tested position. The organization or individual preparing the test questions will provide references by book and page number for each question submitted in order to facilitate proofing of tests.
- 32.2** All test questions will be based solely on material that is appropriate to the position that is being tested, and from material selected by the Police Chief and Fire Chief.
- 32.3** The Director will select a testing site that will have as few interruptions or distractions as possible during the testing process.
- 32.4** All materials necessary to take the examination shall be brought to the test site by the Director, to include:
- a. test booklets
 - b. answer sheets

- c. soft lead pencils
- d. blank scratch paper

- 32.5** The examinee is not allowed to bring any books, papers, calculators or other items to the testing site.
- 32.6** No examinee will be allowed to enter the test site after the posted time.
- 32.7** Once a person has entered the examination site and accepted the test booklet and answer sheet, he/she will be considered a valid applicant for promotion, and will be included in the posted results of that promotional examination.
- 32.8** The use of tobacco products, including smokeless tobacco, vaping or simulated smoking products will be prohibited at all times in the testing room or within the testing facility.
- 32.9** Any examinee who uses, or attempts to use, any unfair or deceitful means to pass an examination shall be informed by the test monitor that the candidate's action will be reported to the Chief for immediate investigation. If an investigation determines that the examinee used or attempted to use unfair or deceitful means to pass the examination, it will be sufficient grounds to bypass an examinee on the eligibility list. The Department Head will determine if disciplinary action is warranted.
- 32.10** Any person requesting an accommodation under the Americans with Disability Act in taking the promotional exam must request the accommodation in writing and present the documentation to the Director at least three weeks prior to the closing date for application.
- 32.11** The employee requesting an accommodation must present documentation of a specific disability that would negatively impact the employee's performance on the exam. The documentation must be on letterhead stationery from the medical or educational professional who is familiar with the individual's disability. The documentation must be dated within the three years prior to the date of the entrance examination.
- 32.12** Employees with disabilities are entitled to, and have the responsibility to meet, the same deadlines for application and submission of documentation established for nondisabled individuals.
- 32.13** The City of Temple will offer reasonable accommodations for the written promotional exam for those persons with documented disabilities.
- 32.14** Requests for accommodations on the written examination will be reviewed on a case by case basis.
- 32.15** Promotional Examination Procedures for Personnel on Active Military Duty:
- a. Promotional candidates who are eligible to take a promotional examination, and who are serving on active military duty, are eligible to take a separate promotional examination. An examination that is or is not identical to the examination administered to other eligible candidates may be administered outside the presence of other candidates.

- b. The Director is authorized to coordinate all testing under this subsection, and may exercise discretion necessary to ensure the secrecy of the examination, and to ensure proper administrative procedures are followed.
- c. Before the ninetieth (90th) day before the date a promotional examination is held, a notice listing the sources from which the examination questions will be taken will be sent to each active duty military promotional candidate. The notice shall be sent to the active duty military promotional candidate's last known address, including last known e-mail address.
- d. The Department will provide the active duty military promotional candidate with copies of the necessary source material.
- e. Before the 30th day before the date a promotional examination is held, a notice of the examination will be sent to the active duty military promotional candidate's last known address, including last known e-mail address.
- f. Promotional candidates must notify the Director at least 25 days in advance of the examination of their desire to have the examination administered off-site.
- g. It is the active duty military promotional candidate's responsibility to work with the Director to schedule the administration of the examination.
- h. At no time will the administration of a promotional examination being given to a promotional candidate serving on active military duty unnecessarily interfere with ongoing military efforts.
- i. If the candidate serving on active military duty takes and passes a promotional examination, the candidate's name will be included on the promotional eligibility list created nearest in time to the time at which the candidate on active military duty took the examination.
- j. Candidates serving on active military duty who take the promotional examination outside of Temple will be eligible to examine the candidate's examination and answers, the examination grading, and the source material for the examination, and to file an appeal of the examination as provided in Section 143.034 of the Texas Local Government Code and these rules. The Director will coordinate all matters related to the review of the examination and the filing of the appeal, and may extend the time limit for appeal upon a showing of exigent circumstances.
- k. All employees covered by Chapter 143 of the Texas Local Government Code who are called to active military duty must notify the Director of their mailing address and/or their e-mail address. The Director will use his or her best efforts to inform the employees serving on active military duty of upcoming promotional examinations.
- l. In the Police Department, where the alternate promotional system is utilized, the active duty military promotional candidate who passes the written examination shall take the assessment center, or other Commission approved test, upon return to service with the Temple Police Department. If an assessment center is utilized, it will be convened using the same exercises as the assessment center used by the non-

deployed candidates on the current promotional list, and will, as closely as possible, utilize the same assessors.

SECTION 33. PROMOTIONAL EXAMINATION GRADES

- 33.1** The grading of each promotional examination will begin when one eligible examinee completes the examination. The examinations will be graded at the examination location and in the presence of any examinee who wants to remain during the grading.
- 33.2** Scores on the written promotional examinations will be based upon a maximum of one hundred (100) points and will be determined entirely by the correctness of each examinee's answers to the questions. Examinees receiving seventy (70) points or more will be determined to have passed the examination.
- 33.3** Each examinee is entitled to receive one point for each year of seniority as a classified officer in his department, up to a maximum of ten (10) points. Seniority points will be calculated for whole years of service only, and not for partial years of service.
- 33.4** The Director will establish an eligibility list from persons passing the promotional testing. Examinees will be ranked on the eligibility list in order of their examination scores, from the highest score to the lowest.
- 33.5** The total final grade of each person on the eligibility list will be computed, for all persons making at least a minimum passing score on all promotional testing, by adding the any seniority points for years of service to the examination raw score.
- 33.6** Tie total scores on promotional examinations shall be broken using the following procedures:
 - a. The person with the highest raw score on the written examination will be placed ahead of the others with the same total score.
 - b. If application of item (a) still results in a tie, the person with the most time in grade shall be placed ahead of the others with the same total score.
 - c. If application of items (a) and (b) still results in a tie, the person with the most seniority in the department shall be placed ahead of the others with the same total score.
 - d. If application of items (a), (b), and (c) still results in a tie, the employees will draw straws for placement on the eligibility list. The person drawing the longer straw will be placed ahead of the one with the shorter straw. Drawing will be conducted in the presence of the Director.

SECTION 34. REVIEW AND APPEAL OF PROMOTIONAL EXAMINATION

- 34.1** The employee will have five (5) business days following the examination date to review the results and file an appeal. The five (5) business day review period begins on the first business day following the exam date. The employee may review their test one time per day during the five (5) business day period.

- 34.2** Employees wishing to review their tests may do so in the Human Resources Department during normal business days and hours. Once in the reviewing area, the employee will be provided with a copy of the test and his graded answer sheet.
- 34.3** Employees are prohibited from copying any question or any part of the examination.
- 34.4** If an appeal is filed, it must be submitted to the Commission through the Director not later than 5:00 p.m. on the fifth (5th) business day following the date of the examination. Saturdays, Sundays, and legal holidays are excluded in determining the five day period.
- 34.5** The appeal must be in writing, and delivered in person, or by certified mail, or by e-mail, or by fax to the Civil Service Director, at the following:

Civil Service Director, Sandra Esqueda
2 North Main St., Suite 209
Temple, Texas 76501
Email: sesqueda@templetx.gov
Fax: 254-298-5253

The appeal must include the following information:

- a. The date of the examination and classification of the test being appealed (i.e., driver, captain, etc.)
 - b. The reason for the appeal, including a complete and thorough justification for the appeal.
 - c. The specific action desired on the part of the Commission (i.e. delete the question, change answer, invalidate entire test, etc.)
- 34.6** If an employee appeals a question(s) on a promotional examination under this rule, the Director will prepare a written notice of the hearing and notify all parties concerned of the time, date, and place of the appeal hearing.
- 34.7** Once appeals are received, the Director will prepare a written response for each appeal filed, to include:
- a. Question number being appealed
 - b. Appealed question and answers as they appear on the test
 - c. Correct answer, as shown on scoring key
 - d. Copy of the page(s) from the source material from which the question was pulled
 - e. Appellant(s) name(s)
 - f. Appellant(s) written reason for appeal
 - g. Director's response, if any, including recommended action
- 34.8** This information will be mailed, e-mailed, faxed or hand delivered to each Commissioner at least 48 hours in advance of the scheduled appeal hearing. A copy of this information will also be sent to the Department Head and to each appellant through the Department Head

(only information pertaining to the question being appealed by an appellant will be sent to the appellant).

34.9 During the appeal hearing, the following rules will apply:

- a. Appealed questions will be considered in numerical order.
- b. Each appellant will be given an opportunity to present reasons for appeal. The appellant may designate someone else to present comments on their behalf.
- c. The Chair will first ask each appellant if he/she still wishes to appeal. The appellant will then be allowed to make a brief presentation. The Commission will limit the time for each appellant to speak on each question (normally, four minutes).
- d. After each appellant has spoken on the question, the Commission may ask questions of the appellant or the Director. The Chair will allow others an opportunity to speak on the question, offering differing opinions.
- e. The Commission will then consider the arguments of the appellant(s) and any others spoke on the issue, and vote on one of the following alternatives for the appealed question:
 1. Keep the same answer as provided on the original answer key;
 2. Change the correct answer to a single alternate correct answer;
 3. Allow more than one correct answer;
 4. Delete the question.
- f. The Commission will indicate their decision for each question on a form provided by the Director, and each Commissioner who agrees with that decision will sign the form. A majority of the Commission agreeing on a decision will determine the final decision on that question.
- g. The Commission will then consider the next question being appealed until all appealed questions have been considered and decided.
- h. The Director will re-score all answer sheets, if necessary, to conform to the Commission's determination regarding each appealed question, and post a new eligibility list after the hearing. The amended eligibility list will have the same effective date as the original list. If a question is deleted, the total number of test questions will be reduced, and the new eligibility list will be based on the remaining number of questions. For example, if two questions are deleted, the total number of questions on the test will be reduced to 98, and the value of remaining questions will be changed to equal a total of 100 points. All answer sheets will be re-graded to show the total number of correct answers out of 98. Seniority points will then be added, and a new eligibility list will be posted.

SECTION 35. ALTERNATE PROMOTIONAL SYSTEM IN POLICE DEPARTMENT

- 35.1** If adopted by a majority vote of the sworn police officers in the department and on recommendation of the Chief, the Commission will adopt an alternate promotional system in accordance with Chapter 143.035 of the Local Government Code.
- 35.2** All officers who pass the written exam will be eligible to participate in the assessment center. Assessors will be impartial, third-party assessors independent from the City of Temple and its employees.
- 35.3** Assessment center exercises may include, but will not be limited to:
- a. written exercises;
 - b. a performance test of problem-solving and interpersonal skills with a focus on supervising and managing subordinates;
 - c. oral presentation, and
 - d. oral interview
- 35.4** Each candidate will receive a numerical score based exclusively on his or her performance in the assessment center. The score will be based on 100 possible points. Candidates must receive a passing score of seventy (70) points or more on the assessment center exercises.
- 35.5** The eligibility list will be established using the following procedures to arrive at a final score:
- a. Forty (40) percent of the written exam score will be added to sixty (60) percent of the assessment center score.
 - b. One point for each year of seniority as a classified officer in the department, up to a maximum of ten (10) points, will be added to the established sum of the written exam and assessment center score.
 - c. Each participant will be ranked on the eligibility list on the basis of their final score, with the person having the highest final score ranked number one, the person having the second highest final score being ranked number two, and so forth.
- 35.6** Tie final scores will be broken using the following procedures:
- a. The person with the highest assessment center score will be placed ahead of the others with the same final score.
 - b. If application of item (a) still results in a tie, the person with the most time in grade shall be placed ahead of the others with the same final score.
 - c. If application of item (a) and (b) still results in a tie, the person with the most seniority in the department shall be placed ahead of the others with the same final score.
 - d. If application of item (a), (b), and (c) still results in a tie, the person with the highest score on the written exam will be placed ahead of the others with the same final score.
 - e. If application of item (a), (b), and (c) and (d) still results in a tie, the candidates will draw straws for placement on the eligibility list. The candidate drawing the longer

straw will be placed above the one with the shorter straw. The drawing will be conducted in the presence of the Director.

- 35.7** The Director will certify the eligibility list and post the list in the lobby of the Municipal Building and at the Police Department as soon as possible after the assessment center exercises are completed.
- 35.8** A candidate may appeal any assessment center exercise to the Civil Service Commission. Individual exercise questions or problems cannot be appealed. Appeals of the assessment center exercises must be filed with the Civil Service Director within five (5) business days after the day the eligibility list is posted at the Police Department. Appeals must be in writing, and received in the Director's office no later than 5:00 p.m. on the fifth (5th) day following the date the list was posted at the Police Department.
- 35.9** The Director will notify all candidates affected by an appeal so they may attend and defend their own positions at any subsequent hearing on the appeal.
- 35.10** The eligibility list for promotion under the alternate promotional system will be effective for one (1) year from the date the final eligibility list is certified by the Director.

SECTION 36. PROCEDURES FOR MAKING PROMOTIONAL APPOINTMENTS

- 36.1** Promotions in the classified service of the Police Department and the Fire Department will be made in accordance with Chapter 143.036 of the Local Government Code.
- 36.2** Occupying the top position on a promotional eligibility list does not create an absolute right to be promoted. Among other things, all promotions are subject to:
- a. a vacancy in the classification during the one (1) year the eligibility list is in effect;
 - b. an authorized position in the city budget;
 - c. prior review by the Department Head for determination of a promotional bypass action in accordance with Chapter 143 of the Local Government Code.

SECTION 37. RECORD OF CERTIFICATION AND APPOINTMENT (RESERVED)

SECTION 38. TEMPORARY DUTIES IN A HIGHER RANK – POLICE DEPARTMENT

The provisions of this rule apply solely to certified employees of the Police Department.

38.1 General Provisions

- a. In order to meet immediate Departmental staffing needs, the Department Head shall have the authority to temporarily assign an officer to perform the duties of a position in the next higher rank under the following circumstances:
 1. when that position has been funded, but not yet created or authorized by the City's governing body, or
 2. when there is a vacancy in an existing position for which no promotional list exists.

- i. An officer temporarily assigned under this subsection has no property right or interest, in law or equity, to continued employment in the temporarily assigned position, and will be demoted to the position (s)he occupied prior to the temporary assignment immediately upon determination of the officer occupying the first position on the eligibility list.
 - ii. This subsection does not preclude back-pay due to the person who is ultimately promoted to fill the position from the promotional list once established.
- b. Assignments made pursuant to this rule are temporary in nature, and specifically intended to address immediate, pressing Departmental staffing needs.
- c. Assignments made pursuant to this rule are expressly limited to such period of time as is necessary for the City to formally create the position by ordinance, or complete the process of creating a promotional list for the position.
- d. A person temporarily serving in a higher rank shall have full authority and responsibility for performing all of the duties of the assigned rank for the duration of the assignment.
- e. An officer temporarily assigned to a position in the next higher rank under this provision shall be paid the base salary of the rank to which (s)he has been temporarily assigned, and the officer's own longevity or seniority pay, educational incentive pay, and certification pay for the period of the temporary assignment.
- f. This rule does not circumvent the express intent of Chapter 143 of the Texas Local Government Code, which specifies that promotions are to be made solely through the promotional testing process.
- g. The rule does not authorize the Department Head to, directly or indirectly, create a position that has not been funded by the City's governing body.
- h. The provisions of this rule are specifically intended to supersede the applicable statutory provision of Chapter 143 of the Texas Local Government Code as allowed by Subchapter C, Chapter 142 of the Texas Local Government Code.

38.2 Corporal Rank

- a. When no Sergeant or Lieutenant is available to act as a field supervisor for a shift due to absence, illness, or injury, a Corporal shall be designated as "Acting Sergeant/Field Supervisor" for that shift.
 - 1. When no Sergeant is available to act as a field supervisor for a shift due to absence, illness, or injury, and the Lieutenant determines an additional field supervisor is necessary to meet staffing needs, the Lieutenant may designate a Corporal as an "Acting Sergeant/Field Supervisor" for that shift.
 - 2. The Acting Sergeant/Field Supervisor designation shall be made by a Lieutenant, Deputy Chief, or the Department Head, and be noted in writing on the Duty Roster.

3. A person serving in this designation shall have full authority and responsibility for performing all of the duties of the Sergeant rank for the duration of the designation.
 4. The officer designated as Acting Sergeant/Field Supervisor shall be paid the base salary of the Sergeant rank, plus the officer's own longevity and seniority pay, educational incentive pay, and certification pay during the period of the designation.
 5. The designation shall be made on a rotating basis to all Corporals, from a list which will be distributed to the Unit.
 6. The Department Head, or his designee, retains discretion to deviate from the order of names on the list when designating an Acting Sergeant. This decision is not subject to appeal and shall not be the basis for a grievance.
 7. If no list is available, the designation will be made on the basis of seniority.
- b. A Lieutenant may designate a Corporal to act as Mentoring Sergeant under the supervision of a Sergeant or Lieutenant.
1. The Mentoring Sergeant designation is specifically intended for training and mentoring purposes, as part of a comprehensive career development program, and will not be made for the purpose of meeting Departmental staffing needs.
 2. The designated officer will have the immediate authority of a Sergeant for the duration of the designation, however ultimate authority and responsibility for the shift remains with the available Sergeant or Lieutenant.
 3. The designation shall be made by a Lieutenant, Deputy Chief, or the Department Head, and be noted in writing on the Duty Roster.
 4. The Mentoring Sergeant shall not receive higher classification pay during the designation period.
 5. The designation shall be made on a rotating basis to all Corporals, form a list which will be distributed to the Unit.

38.3 Sergeant Rank

- a. When a Lieutenant will be absent or unavailable for period of at least twenty-eight (28) consecutive days, the Department Head, or his designee, may designate a Sergeant to perform the administrative duties of a Lieutenant/Watch Commander.
1. The designation shall be made by a Deputy Chief, or the Department Head, and be noted in writing on the Duty Roster.
 2. A person serving in this designation shall have full authority and responsibility for performing all the duties of the Lieutenant rank for the duration of the designation.

3. The designated Watch Commander shall be paid the base salary of the Lieutenant rank, plus the officer's own longevity and seniority pay, educational incentive pay, and certification pay during the period of the designation.
4. The designation shall be made on a rotating basis from a list of Sergeants.
5. If no list is available, the designation shall be made on the basis of seniority.
6. The Department Head retains discretion to deviate from the order of names on the list when designating a Watch Commander. This decision is not subject to appeal and shall not be the basis for a grievance.
7. The Department Head retains authority to designate a Watch Commander, pursuant to this rule, for a period of less than twenty-eight (28) days, based on Departmental needs.

SECTION 39. PROMOTIONAL INCENTIVES FOR EDUCATION – POLICE DEPARTMENT

The provisions of this rule apply solely to certified employees of the Police Department.

- a. In addition to the points a promotional candidate is entitled to receive under Chapter 143.033 of the Texas Local Government Code for seniority, promotional candidates in the Police Department are also entitled to receive points for continuing education as follows:
 1. Level 1 – 0.50 points for having received an Advanced Certificate issued by the Texas Commission on Law Enforcement (TCOLE);
 2. Level 2 – 1.0 points for having completed sixty (60) college hours credit with a passing grade from an accredited institution of higher education, college, or university;
 3. Level 3 – 1.5 points for having received a Master Peace Officer Certificate issued by the Texas Commission on Law Enforcement (TCOLE);
 4. Level 4 – 2.0 points for having received an Associates Degree from an accredited institution of higher education, college, or university;
 5. Level 5 – 3.0 points for having received a Bachelors Degree or higher from an accredited institution of higher education, college, or university.
- b. A promotional candidate is entitled to receive the points for only the highest level attained listed above.
- c. Points awarded to a promotional candidate under this rule shall be added to the final score received after the testing process has been completed.

SECTION 40. (RESERVED)

SECTION 41. SALARY

- 41.1** Police applicants with a minimum of one (1) year full-time prior service as a police officer, and possessing a TCOLE license or having passed the TCOLE state licensing exam, will be placed in the current pay grade on the Temple Police Department compensation plan

commensurate with that service based on criteria established by the Civil Service Commission.

- 41.2** Upon successful completion of the Probationary classification, applicants with prior municipal police service in a city with a population of 30,000 or more (see 41.10) will receive one credit year for each full year of police service, not to exceed ten (10) credit years.
- 41.3** Upon successful completion of the Probationary classification, applicants with prior field deputy service with a county sheriff's office with a population of 175,000 or more (see 41.10) will receive one credit year for each full year of field deputy service, not to exceed ten (10) credit years.
- 41.4** Upon successful completion of the Probationary classification, applicants with prior municipal police service in a city with a population of less than 30,000 (see 41.10) will receive one credit year for each two (2) full years of prior police service, not to exceed five (5) credit years.
- 41.5** Upon successful completion of the Probationary classification, applicants with prior field deputy service with a county sheriff's office with a population of less than 175,000 (see 41.10) will receive one credit year for each two (2) full years of prior field deputy service, not to exceed five (5) credit years.
- 41.6** Upon successful completion of the Probationary classification, applicants with prior field service experience with any TCOLE certified organization other than a municipal police organization or a county sheriff's office will receive one credit year for each two (2) full years of prior field service, not to exceed five (5) credit years.
- 41.7** The "credited time" will NOT count as time served in the Temple Police Department for any purpose(s) except determining the starting pay grade. Credited time will not count toward eligibility for any benefits, assignments, promotions, longevity, or retirement.
- 41.8** Applicants who receive prior service credit will remain in the assigned starting pay grade until they have the required years of actual service with the Temple Police Department to advance to the next pay grade.
- 41.9** Prior service will be calculated on full years of service with an entity. Partial years of service with different entities will not be added together to make a full year.
- 41.10** The City will use the latest official census figures from the U.S. Census Bureau at the time the applicant is hired to determine city and county populations.

SECTIONS 42-43. (RESERVED)

SECTION 44. CERTIFICATION AND EDUCATION INCENTIVE PAY

- 44.1** Police officers and fire fighters who have completed their probationary period are afforded the opportunity to qualify for certification and educational incentive pay, with the exception of incentive payments for certification as EMT Basic, EMT Intermediate, Paramedic, Intermediate Fire, Intermediate Police, Advanced Fire, Advanced Police, Master Police, and Master Fire, which are payable from the inception of employment with the City of

Temple. Additionally, shift differential pay will be available to probationary employees in the Police Department.

- 44.2** Fire fighters who meet the Texas Commission on Fire Protection requirements for certification are eligible for certification pay as established by the City Council. Fire fighters who meet the Texas Department of State Health Services requirements for certification as an Emergency Medical Technician or Paramedic are eligible for certification pay as established by the City Council.

Fire fighters whose Paramedic certification expenses were paid by the Temple Fire and Rescue Department shall reimburse the certification costs, on a prorated basis over a period of three (3) years, if they voluntarily separate from employment within three years after achieving Paramedic certification. At the time of separation, the prorated amount will be deducted from the fire fighter's final payment for accrued sick and vacation time, as necessary.

- 44.3** Police officers who meet the Texas Commission on Law Enforcement requirements for certification are eligible for certification pay as established by the City Council.
- 44.4** Certification pay will begin on the first pay period after the Human Resources Department has received the proper certification records and a Personnel Action Form signed by the Department Head.
- 44.5** To the extent that funds have been appropriated by the City Council for educational incentive pay, police officers and fire fighters can receive educational incentive pay for either college degrees or college semester hours without a degree.
- 44.6** To receive educational incentive pay for college semester hours without a college degree, fire fighters and police officers must have a minimum of thirty (30) semester hours and must receive a minimum letter grade of "C-" for successfully completing courses at an accredited college or university.
- 44.7** Educational incentive pay will begin on the first pay period after the Human Resources Department has received the original college transcript and a Personnel Action Form signed by the Department Head. A certified transcript will be required for all education pay, including pay for degrees. If seeking incentive pay for a degree, the certified transcript must clearly show that a degree was received.
- 44.8** If an employee is unable to work due to a line of duty injury, and the employee's certification lapses during that time, the employee's certification pay will continue. The employee will have thirty (30) days following release to full duty to regain certification, or certification pay will cease.
- 44.9** To be eligible for language incentive pay, police officers must achieve a passing grade on an Intermediate Level Spanish or American Sign Language proficiency examination to be administered through the Human Resources Department.
- 44.10** The amount of language incentive pay for eligible police officers will be established by the City Council during the annual budget review.

SECTIONS 45-47. (RESERVED)

SECTION 48. OVERTIME COMPENSATION – POLICE DEPARTMENT

This section applies solely to certified employees of the Police Department.

48.1 General Guidelines

- a. The allocation of budgeted overtime funds is solely within the discretion of the Department Head.
- b. The Department Head has sole discretion to assign personnel as necessary to achieve the Department's objectives.

48.2 Overtime Exception

- a. The overtime exemption provided for by the Fair Labor Standards Act (FLSA) known as the 7(k) exemption will be used to determine the applicable work period for purposes of overtime under the FLSA for certain work groups.
- b. The City reserves the right to make an initial determination regarding whether an overtime exemption applies, based on its own evaluation, or based on a request for an evaluation from the Department of Labor (DOL).

48.3 Amendment of Work Period

- a. The City reserves any and all rights to alter or amend the work period, if to do so serves the legitimate governmental and management interests of the City.
- b. The maximum work period that will be utilized by the City is a fourteen (14) day work period.
- c. The maximum number of hours that will be worked without overtime pay within a 14-day work period will be eighty (80).

48.4 Scheduled Overtime Assignments

- a. All scheduled overtime assignments subject to contractual agreements with third parties will be compensated at a guaranteed rate of time and half, without regard to the number of hours worked by an officer during that pay period.
- b. Other overtime assignments for which compensation will be at a guaranteed rate of time and half, without regard to the number of hours worked by an officer during the pay period, shall be identified and posted as such.
- c. All scheduled overtime assignments for City events will be paid at time and half, unless an officer has worked less than eighty (80) hours during the relevant pay period.
- d. In the event that an officer scheduled to work a City event has not worked eighty (80) hours due to taking sick or vacation leave during that pay period, the officer will be compensated at his regular hourly rate for the City event. The officer shall have the option to elect whether to apply straight "additional regular" time in lieu of the leave time taken, or to receive additional compensation for working the city event, but in no case shall the officer be compensated at the rate of time and a half.

- e. Supervisors shall not require officers who are scheduled to work a City event to take flex days prior to the City event in order to avoid paying the officers overtime for working the City event.

48.5 Unscheduled Overtime

- a. Call-Outs: Non-exempt officers who are off-duty and receive notification to return to duty status shall be entitled to a minimum of two (2) hours of overtime compensation, regardless of actual time worked. Time worked, in this circumstance, shall begin when the notification is received, and continue until the officer is cleared from the call.
- b. If an officer is required to work unscheduled overtime, the officer shall have the opportunity to elect whether (s)he will be compensated with compensatory time, or paid overtime for that assignment, subject to leave balance restrictions. If the supervisor does not flex the officer's time, the overtime slip submitted by the officer will be processed as submitted.
- c. No supervisor shall amend a payment form submitted by an officer for such an assignment without the officer's prior consent.
- d. If the supervisor does flex the officer's time, the supervisor will work with the officer to schedule the flex time off, subject to the needs of the Department.

48.6 Court Appearances

An officer who makes a required court-related appearance prior to, or after his or her regularly scheduled shift, is guaranteed a minimum of two (2) hours of overtime compensation, regardless of the actual time spent in court. Time worked, in this circumstance, includes scheduled report time until released by the court.

48.7 Compensatory Time

- a. Overtime assignments for which compensation will be in the form of compensatory time off in lieu of paid overtime shall be identified and posted as such in advance.
- b. Unless an overtime assignment has been posted as a compensatory time assignment, compensation for that assignment shall be paid overtime.
- c. If an officer is required to work an overtime assignment for which the form of compensation has not been identified prior to the start of the overtime assignment, the officer shall have the opportunity to elect whether (s)he will be compensated with compensatory time or paid overtime for that assignment, subject to leave balance restrictions. If the supervisor does not flex the officer's time, the overtime slip submitted by the officer will be processed as submitted. No supervisor shall amend a payment form submitted by an officer for such an assignment without the officer's prior consent.
- d. If the supervisor does flex the officer's time, the supervisor will work with the officer to schedule the flex time off, subject to the needs of the Department.
- e. This rule does not limit the Department Head's ability to assign officers to work overtime assignments paid with compensatory time off as necessary to meet Departmental objectives.

- f. This rule does not limit the Department Head's authority to implement flex time in managing the Department's budget.
- g. Subject to staffing needs, supervisors and officers will schedule compensatory time off at a mutually agreeable time.

48.8 Administrative Challenge

This rule does not prevent an individual officer or a class of officers from exercising their administrative rights to challenge the application of an exemption using applicable DOL procedures and protocols, or the City from defending its application of an exemption.

48.9 Statutory Override

This rule specifically supersedes Section 142.0015(j) of the Texas Local Government Code, and any and all other contrary state provisions to allow the adoption of the FLSA 7(k) overtime exemption, and provide for an alternate work period.

SECTION 49. INDIVIDUAL VEHICLE ASSIGNMENT PROGRAM (IVAP) POLICE DEPARTMENT

The provisions of this rule apply solely to certified employees of the Police Department

- a. An officer participating in the IVAP program is eligible to take a vehicle home, providing the officer's residence is not more than seven (7) miles outside the Temple city limits.
- b. For an officer to be eligible to participate in the IVAP program, the officer must:
 - 1. be employed as a Temple Police Officer;
 - 2. have successfully completed all phases of the Field Training Program, and
 - 3. have been assigned a designated vehicle.
- c. Vehicles will be assigned, when available, to new officers on the basis of the civil service ranking.
- d. Officers assigned a vehicle shall abide by Temple Police Department General Orders, Chapter 803, "Police Vehicles", as amended.
- e. Officer who are assigned a vehicle in the IVAP program, and elect to take that vehicle home shall be assessed a fee for the use of the vehicle as follows:
 - 1. Officers residing within the city limits – no charge
 - 2. Officers residing outside the city limits but no more than seven (7) miles outside the city limits - \$23 per pay period.
 - 3. Any officer who resides .5 miles or less outside the City and is assigned a vehicle that the officer elected to take home at the time the Meet and Confer Agreement between the City of Temple and the Temple Police Association was adopted on October 6, 2016 (the "Agreement") is exempt from the payment of fees related to the take-home vehicle unless the officer moves more than .5 miles outside the city limits after the effective date of the Meet and Confer Agreement.

4. Any officer who is assigned a take home vehicle because of their duty assignment and who resides outside the city at the time of the Agreement is exempt from the distance limitations and the payment of fees.
 5. Officers who are assigned a take home vehicle because of their duty assignment after the Agreement was adopted may be assessed the appropriate fee as a condition of accepting the position.
 6. The city may impose residential distance restrictions on officers as a condition of eligibility for assignment to future positions in which an assigned vehicle and the ability to respond in a timely manner is a requirement for the position.
- f. One (1) Criminal Investigation Division supervisor, and three (3) Criminal Investigation Division detectives assigned by the Department Head are exempt from the distance limitations and the payment of fees as follows:
1. If an officer in one of the above listed positions lives more than seven (7) miles from the city limits, the officer may utilize an assigned vehicle and take that vehicle home when the officer is on-call, and the officer is exempt from the payment of fees for the use of the vehicle while on-call.
 2. Any officer who is assigned to one of the above listed positions and lives outside the city limits, but within seven (7) miles from the city limits, and does not elect to take the vehicle home and pay the associated fees may utilize a take-home vehicle when the officer is on-call, and the officer exempt from the payment of fees.

SECTION 50. (RESERVED)

SECTION 51. CAUSE FOR REMOVAL OR SUSPENSION.

- 51.1** The primary purpose of this section is to ensure that disciplinary action is imposed fairly and equitably, with the objective of correcting deficient performance and securing substantial compliance with the working rules and regulations of the Civil Service departments.
- 51.2** Any employee of the classified service may be disciplined, suspended or indefinitely suspended if he or she commits, or conspires to commit, the following acts and/or omissions;
- a.. conviction of a felony or other crime involving moral turpitude;
 - b. violation of any provision of the Charter of the City of Temple;
 - c. acts of incompetency;
 - d. neglect of duty, which includes but is not limited to the violation of the following rules:
 1. While on duty as a police officer or a fire fighter, an employee's primary obligation is the performance of his job duties. Employees are expressly prohibited from engaging in any other activity or being employed in any other business during his working hours with the City. Employees are expressly prohibited from engaging in any other activity or being

- employed in any other business which might conflict or interfere with his or her job-related obligations.
2. All employees shall remain alert, observant, and occupied with the department's business while on duty, and will not conduct themselves in a manner that would merit criticism for inattentiveness or waste of time.
 3. All employees shall furnish the department a telephone number or means of contact by which they may be located in the event of an emergency. All employees shall keep the department informed as to their current residence addresses and telephone numbers, and any secondary contact information necessary to establish reliable communication in the event of a Departmental emergency call-back . Post office boxes alone are not acceptable. In case of an address or telephone number change, the employee shall report such change to the department within 24 hours.
 4. Improper or negligent handling or willful damage to City property shall subject an employee to disciplinary action. Any employee who has lost or destroyed any equipment issued to him or her by the department may be required to make restitution if the loss or damage is the result of negligence on the part of the employee. Each employee shall properly report the need of repairs to any City owned property used by him or her to the City employee officially charged with the maintenance of such property. No employee shall alter, repair, or in any way change or remove any parts or accessories to any City owned property without permission of the supervisor. "City owned property" includes, but is not limited to, buildings and office equipment, machines, clothing, firearms, communication equipment, and motor vehicles.
 5. All employees shall conduct themselves so as to bring no discredit upon their departments. No employee shall engage in any form of gambling as defined in the Texas Penal Code while on duty or in uniform.
 6. Employees shall immediately report any violation of the Civil Service Rules to an appropriate City authority.
- e. Discourtesy to the public, or to a fellow employee while in the line of duty or off- duty, in accordance with department policies, procedures or directives. In this respect, no employee shall unnecessarily cause injury towards any person.
- f. Acts showing lack of good moral character, including, but not limited to:
1. soliciting special privileges, using his or her position or City property for personal gain or private privileges;

2. accepting, agreeing to accept, or solicitation of anything of value, bestowed or promised in exchange for special privileges or personal gain by the donor or other person;
 3. a supervisor placing himself or herself under substantial obligation, financial or otherwise, to a subordinate;
 4. violation of any state or federal statute;
 5. entry of a plea of guilty or no contest, or a judicial admission, to a felony or crime of moral turpitude.
- g. Drinking intoxicants, or intoxication, while on duty, arriving to work while under the influence of alcohol (consuming alcohol within 4 hours of reporting to work), or intoxication while off duty, as well as any violation of the City of Temple Drug and Alcohol Policy. Exemptions to this may only be allowed under circumstances indicated in Police Department policies and regulations.
- h. Conduct prejudicial to good order, which shall include but is not limited to:
1. while on duty, not wearing the uniform or insignia of rank, or not carrying such equipment as required by the Chiefs of the respective departments;
 2. wearing a police officer or fire fighter uniform, or any part of the uniform, while off duty, except with the express permission of his or her respective Chief or commanding officer;
 3. allowing another person to use his or her uniform, equipment, or credentials;
 4. violation of departmental policy pertaining to dress code and personal appearance;
 5. willful disobedience of any lawful order addressed to the police officer or fire fighter by a supervisor; or
 6. the known willful issuance by a supervisor of any order which violates any law, ordinance or departmental rule.
- i. Refusal or neglect to pay just debts.
- j. Absence without leave.
- k. Shirking duty, or cowardice at fires, if applicable, or
- l. Violation of any applicable Fire or Police Department rule or special order, the City of Temple Personnel Policies and Procedures Manual, City Charter, or any ordinance of the City of Temple.

SECTION 52. DISCIPLINARY SUSPENSIONS.

52.1 General Provisions

- a. The Police Chief or the Fire Chief may suspend a police officer or fire fighter under the Department Head's supervision or jurisdiction for the violation of a Civil Service rule in accordance with Chapter 143 of the Local Government Code.

- b. The Department Head has discretion to select which days the employee is suspended, and the days of suspension do not have to be consecutive days.
- c. The Department Head has discretion to withdraw the suspended employee's right to work off duty. Hardship cases may be requested and decided by the Department Head on a case-by- case basis.
- d. Prior to imposing a suspension, the Department Head may use lesser forms of disciplinary or corrective action. However, nothing herein shall prohibit the Department Head from proceeding directly to the appropriate level of discipline without using progressive discipline if, in the opinion of the Department Head, the employee's misconduct warrants more severe disciplinary action.

52.2 Due Process

- a. Initial Loudermill meeting: Prior to imposing a demotion, temporary suspension, or indefinite suspension, the Department Head shall provide the fire fighter or police officer a draft Notice of Proposed Discipline which will include the text of any Civil Service rules, departmental policies, City policies, City ordinances, City Charter provisions, and/or state or federal statutes he or she is alleged to have violated, along with a detailed description of how the employee's alleged conduct violated those policies, rules or laws. The Notice will also state the level of discipline the Department Head is proposing to impose as a result of the alleged violation(s).
 - 1. The fire fighter or police officer may elect to be accompanied by counsel at this meeting.
 - 2. The fire fighter or police officer will sign acknowledging receipt of the draft Notice of Proposed Discipline and have an opportunity to ask any questions.
 - 3. The Department Head will set a date for a second meeting with the fire fighter or police officer. The period of time between the first and second meetings will be sufficient to provide the fire fighter or police officer an opportunity to review the allegations and evidence against him or her, and to prepare a rebuttal to the allegations.
 - 4. The following provisions apply solely to certified members of the Police Department during the initial Loudermill meeting:
 - i. The Internal Affairs investigator, the officer's supervisor, and the Department's legal advisor will also be present at this meeting. The meeting will be recorded by the Department Head, and the officer or officer's counsel may independently record the meeting.
 - ii. If the officer appears without counsel, the Department Head will read the text of the Draft Notice aloud at the meeting. If the officer appears with counsel, the Draft Notice will not be read aloud but will be delivered to the officer's counsel.
 - iii. The date of the second meeting will be scheduled for the fifth (5th)

business day following the initial meeting, unless any of the necessary parties are not available on that date, in which case the second meeting will be scheduled for the next business day when all necessary parties are available, provided that the second meeting must be held no later than eight (8) business days after the first meeting.

- b. Second Loudermill meeting - The Department Head shall provide the fire fighter or police officer an opportunity to respond to the allegations and evidence against him or her described in the Notice of Proposed Discipline.
 - 1. The fire fighter or police officer may present mitigating evidence in any form that he or she believes is relevant and/or helpful to the Department head in coming to a fair and consistent disciplinary decision.
 - 2. The fire fighter or police officer may elect to be accompanied by counsel at this meeting.
 - 3. After the fire fighter or police officer has completed his or her presentation, the Department Head will schedule a date for the final Loudermill meeting with the fire fighter or police officer. The time period between the second and final Loudermill meetings will be sufficient to provide the Department Head an opportunity to review the employee's presentation and consider the final
 - 4. The following provisions apply solely to certified members of the Police Department during the initial Loudermill meeting:
 - i. The Internal Affairs investigator, the officer's supervisor, and the Department's legal advisor will also be present at this meeting. The meeting will be recorded by the Department Head, and the officer, or officer's counsel, may independently record the meeting.
 - ii. The date of the final meeting will be the fifth (5th) business day following the second meeting, unless any of the necessary parties are not available on that date, in which case the final meeting will be scheduled for the next business day when all necessary parties are available, provided that the final meeting must be held no later than eight (8) business days after the second meeting.
- c. Final Loudermill meeting – The purpose of this meeting is for the Department Head to deliver his or her final decision regarding the appropriate level of discipline to the fire fighter or police officer.
 - 1. If demotion, suspension or indefinite suspension is to be imposed, the Department Head shall draft a Final Notice and Order of Demotion, Suspension or Indefinite Suspension, as appropriate, for delivery to the fire fighter or police officer at this meeting.
 - 2. The fire fighter or police officer will sign acknowledging receipt of the Notice and Order. After signing, a copy of the Notice and Order will be provided to the fire fighter or police officer.

3. The fire fighter or police officer may elect to be accompanied by counsel at this meeting.
4. The following provisions apply solely to certified members of the Police Department during the initial Loudermill meeting:
 - i. The Internal Affairs investigator, the officer's supervisor, and the Department's legal advisor will also be present at this meeting. The meeting will be recorded by the Department Head, and the officer, or officer's counsel, may independently record the meeting.
 - ii. If the officer appears without counsel, the Department Head will read the text of the Final Notice aloud at the meeting. If the officer appears with counsel, the Notice will not be read aloud but will be delivered to the officer's counsel.

52.2 The Department Head has discretion to withdraw the suspended employee's right to work off duty. Hardship cases may be requested and decided by the Department Head on a case-by-case basis.

52.3 Working Off Suspended Time – Police Department

- a. The provisions of this Section shall apply solely to a suspension which is agreed to by a classified employee of the Police Department.
- b. No appeal to the Commission or to a Hearing Examiner may be instituted on a suspension for which the employee has agreed to the suspended time.
- c. A classified employee in the Police Department who is suspended for 120 hours or less may, upon the employee's request and waiver of appeal to an administrative or judicial body, forfeit vacation, compensatory, or holiday time equal to the length of the suspension with no loss of paid salary and no break in service for purposes of seniority, retirement, or promotion.
 1. The forfeited vacation, compensatory, or holiday time will not constitute hours worked.
 2. Forfeiture of vacation, compensatory, or holiday time under the terms of this Section will not preclude an officer from being paid overtime at the rate of time and a half for those overtime assignments that have been identified as "guaranteed overtime" assignments by the Department.
- d. Suspensions of thirty-six (36) hours or less:
 1. An officer who receives a suspension of thirty-six (36) hours or less who elects not to forfeit vacation, compensatory or holiday time may only appeal the suspension to the Civil Service Commission.
 2. An officer who has received a suspension within the twenty-four (24) month period prior to the suspension at issue may only forfeit vacation,

compensatory, or holiday time under the terms of this Section with the Department Head's permission.

- e. Suspensions of thirty-seven (37) to one hundred and twenty (120) hours: The Department Head's approval of the use of vacation, compensatory, or holiday time will be noted in the suspension paperwork.
- f. Suspension of one hundred and twenty-one (121) to seven hundred and twenty (720) hours: Either the Department Head or the officer facing discipline may offer to impose or accept a suspension without pay for period from one hundred and twenty-one (121) to seven hundred and twenty (720) hours.
 - 1. If the officer accepts the mutually agreed suspension, there shall be no right to appeal the suspension to any administrative or judicial body, and the officer must sign a waiver of appeal.
 - 2. If the Department Head permits the forfeit of vacation, compensatory, or holiday time for suspension, said vacation, compensatory, or holiday time shall be considered as equal discipline to unpaid hours of suspension. In no case will sick leave be substituted for unpaid hours of suspension.

52.4 Alternative Discipline by Department Head

The provisions of this rule apply solely to certified employees of the Police Department.

- a. In considering appropriate disciplinary action involving suspension of at least thirty-seven (37) hours, the Department Head may require that an officer be evaluated by a qualified professional designated by the Department Head. The Department Head may consider, upon that professional's recommendation, requiring the officer to successfully complete a counseling and/or rehabilitation program as an alternative, or in addition to, demotion, temporary suspension, or indefinite suspension.
 - 1. The counseling and/or rehabilitation program will be completed on the officer's off-duty time unless the Department Head approves the use of accrued vacation or sick leave.
 - 2. The officer shall be responsible for payment of all costs associated with the counseling and/or rehabilitation program which are not covered by the officer's health insurance plan.
 - 3. If the officer's misconduct involves alcohol or substance abuse related behavior, the Department Head may require the officer to submit to mandatory alcohol or drug testing for a specified period of time.
 - 4. If the officer fails or refuses to enter the program, or after entering the program, fails or refuses to complete the program, or fails to submit to mandatory drug or alcohol testing, the officer will be indefinitely suspended for failing or refusing to complete the program, or for failing or refusing to submit to mandatory drug or alcohol testing.
 - 5. The officer has the right to appeal any discipline imposed under this rule to the Civil Service Commission or an independent third party Hearing Examiner by

filing a proper notice of appeal pursuant to Chapter 143 of the Texas Local Government Code.

6. On appeal under this rule, the Commission or Hearing Examiner shall have all the powers and duties set forth in Chapter 143 of the Texas Local Government Code, but shall not have the authority to substitute a program of counseling and/or rehabilitation different from that imposed by the Department Head, or to substitute any period of suspension for the required program of counseling and/or rehabilitation.

b. Alternative Discipline by Agreement

1. In considering appropriate disciplinary action, the Department Head may require that an officer be evaluated by a qualified professional designated by the Department Head. The Department Head may offer, upon that professional's recommendation, the officer the opportunity to enter into an alternative disciplinary agreement under which the officer would accept demotion or a temporary suspension of up to seven hundred and twenty (720) hours, and agree to successfully complete the counseling and/or rehabilitation program recommended by the qualified professional.
2. If the officer accepts the opportunity for agreed alternative discipline, the officer may not appeal any of the terms of the agreement or the disciplinary action before any administrative or judicial body.
3. The counseling and/or rehabilitation program will be completed on the officer's off-duty time unless the Department Head approves the use of accrued vacation or sick leave.
4. The officer shall be responsible for payment of all costs associated with the counseling and/or rehabilitation program which are not covered by the officer's health insurance plan.
5. If the officer's misconduct involves alcohol or substance abuse related behavior, the Department Head may require the officer to submit to mandatory alcohol or drug testing for a specified period of time.
6. If the officer fails to complete the program of counseling and/or rehabilitation without good cause, the officer may be indefinitely suspended without right of appeal regarding the Agreement, or the disciplinary action before any administrative or judicial body.
7. In considering whether the officer had good cause for failing to complete the program, the Department Head will consider whether the officer was prevented from completing the program by circumstances not reasonably within his or her control, e.g., serious illness or death in the family, unavailability of the professional.

c. Last Chance Agreement

1. In considering appropriate disciplinary action, the Department Head may require that an officer be evaluated by a qualified professional designated by

the Department Head. The Department Head may offer, upon that professional's recommendation, the officer the opportunity to enter into a Last Chance Agreement.

2. The Agreement may include the following provisions in addition to any other provisions agreed upon by the Department Head and the officer:
 - i. the officer shall successfully complete the program of counseling and/or rehabilitation recommended by the qualified professional designated by the Department Head;
 - ii. successful completion of the counseling and/or rehabilitation program will be specifically defined in the Agreement;
 - iii. the counseling and/or rehabilitation program will be completed on the officer's off-duty time unless the Department Head approves the use of accrued vacation or sick leave time;
 - iv. the officer shall be responsible for paying all costs of the program of counseling and/or rehabilitation which are not covered by the officer's health insurance plan;
 - v. the officer shall agree to a probationary period not to exceed one (1) year, with the additional requirement that if, during the probationary period, the officer commits the same or a similar act of misconduct, the officer will be indefinitely suspended without right of appeal regarding the Agreement, or the disciplinary action, before any administrative or judicial body.
- d. If the officer's misconduct involves alcohol or substance abuse related behavior, the Department Head may require the officer to submit to mandatory alcohol or drug testing for a specified period of time.
- e. If the officer accepts the opportunity for a Last Chance Agreement, the officer may not appeal any terms of the Agreement.
- f. If the officer fails to successfully complete the agreed upon program without good cause, the officer may be indefinitely suspended without right of appeal regarding the Agreement or the disciplinary action before any administrative or judicial body.
- g. In considering whether the officer had good cause for failing to complete the program, the Department Head will consider whether the officer was prevented from completing the program by circumstances not reasonably within his or her control, e.g., serious illness or death in the family, unavailability of the professional.
- h. Officer's Request for Professional Evaluation
 1. Prior to completion of an Internal Affairs investigation or the imposition of any discipline, the officer may independently request an opportunity to be evaluated by a qualified physician, psychiatrist, or psychologist in order to seek counseling and/or rehabilitation.

- i. The officer's request will toll the 180-day deadline for imposing discipline under Section 143.052(h) of the Texas Local Government Code for the duration of time required for the officer to be evaluated and complete any program of counseling and/or rehabilitation.
- ii. The officer shall be responsible for paying all costs of the program of counseling and/or rehabilitation which are not covered by the officer's health insurance plan.
- iii. The evaluation and the counseling and/or rehabilitation will be completed on the officer's accrued vacation and/or sick and/or compensatory leave time.
- iv. If the officer has insufficient accrued vacation and/or sick and/or compensatory leave time to successfully complete the evaluation and any program of counseling and/or rehabilitation, the officer shall complete the evaluation and/or the program on unpaid leave.
- v. The Department Head may consider any counseling and/or rehabilitation voluntarily undertaken by an officer under this section before imposing discipline.

SECTION 53. APPEAL OF DISCIPLINARY SUSPENSION

53.1 The Commission hereby adopts the procedures set out in this section for hearing appeals of disciplinary suspensions. It is the intention of the Commission that hearings be conducted in an informal manner. The Commission will generally hear testimony without regard to the form of a question or response. Upon objection of either the Department or the appealing officer, or on its own initiative, the Commission reserves the right to limit a particular form of questioning or response, where the Commission determines that such a limitation is in the interest of justice or fair play.

53.2 The procedure for disciplinary hearings will generally be as outlined in Section 10.16.

- a. The Texas Rules of Civil Procedure, the Texas Rules of Criminal Procedure, the Texas Rules of Evidence, and all other rules of court regarding what is commonly known as "discovery" shall not apply to any civil service proceedings.
- b. The scope of evidence to be considered at a disciplinary hearing shall be generally limited to matters relevant to the statement of the charges as set forth in the department's written statement, the employee's notice of appeal, and the employee's previous employment record with the department.
- c. Either party may offer such relevant evidence as he or she may desire to aid in the determination of disputed issues.
- d. It shall be the province of the Commission to ultimately determine:
 1. the admissibility of any particular evidence or testimony;
 2. the relevance or non-relevance of any particular evidence or testimony;
 3. the credibility, or lack thereof, of any particular evidence or testimony, and

4. the materiality, or “weight”, to be given to any particular evidence or testimony.
- e. Subject to limited exceptions for compelling reasons shown by a party, the Commission may refuse to hear or consider any item of evidence or testimony if:
 1. a party has deliberately withheld previously known and duly requested evidence from the other party until the hearing, and the evidence should have been previously produced as per these rules, or
 2. the hearing has been closed.
- f. The Commission may receive and consider the evidence of witnesses by affidavit and assign such weight as it deems proper after consideration of objections, if any, made to its admission.
- g. The Commission may allow testimony of critical witnesses by telephone if the witness is unavailable for the hearing.
- h. On-site inspections shall be discouraged and may be conducted only if the evidence to be considered cannot otherwise be presented via stipulations, photographs, video, maps, diagrams, etc.
- i. All evidence and testimony shall be presented and received into the record while in open session.
- j. Mediation and arbitration rules and processes do not apply to any civil service hearings.
- k. The burden of proof in any disciplinary appeal hearing before the Commission shall be by a preponderance of the evidence.
- l. All parties shall come to the hearing prepared and ready to proceed so as to minimize any disruption of the hearing process.
- m. All parties shall bring at least six (6) copies of all documents or exhibits to be considered by the Commission at the hearing.
- n. A record of the proceedings, capable of clear and accurate reproduction or transcription, shall be made and maintained by the Director.
- o. After being called to order, but prior to the beginning of testimony or evidence, consideration shall be made as to any pre-hearing motions, requests or jurisdictional matters as submitted by either party. The Commission may “carry” such pre-hearing motions until the hearing is completed and all factual evidence has been presented before making its final ruling thereto.
- p. Participants shall seek to obtain as many stipulations as possible as to non-contested or non-material matters.
- q. Unless waived by the participants, the hearing shall then proceed with the reading into the record of the statement of charges and specifications as well as the factual summary of the operative events as filed with the Commission by the Department Head, and which forms the basis of the disciplinary action imposed on the employee.

- r. The hearing shall then proceed to develop the evidence and testimony as to those contested matters.
- s. The Department shall go first in the presentation of evidence and testimony. Thereafter, the employee shall have the opportunity to respond with his or her own evidence, witnesses or testimony. Thereafter, the Department may come forward with rebuttal evidence or testimony as may be necessary.
- t. Presentations by both parties shall be as brief and as closely related to the issue(s) as possible.
- u. Throughout the proceedings, the Commission members may also ask questions as needed in order to aid their consideration of the testimony or evidence.
- v. Witnesses will be sworn and their testimony taken under oath or affirmation.
- w. Witnesses are subject to reasonable and relevant cross-examination by the opposing party.
- x. Upon request by either party, "the Rule" may be invoked concerning oral testimony, meaning that all persons who shall be expected to testify at the hearing, other than the parties and their representatives, shall not be allowed to observe or listen to any of the proceedings except when they are actually testifying as a witness. While under the Rule, potential witnesses shall not discuss any aspect of the appeal or hearing except with the attorneys or the representative involved. Invoking the Rule is not mandatory, and may be waived in whole or in part by agreement.
- y. The Chair shall exercise reasonable control over the questioning of witnesses and the presentation of evidence so as to:
 - 1. effectively ascertain the truth;
 - 2. keep such presentations relevant to the issues to be determined;
 - 3. avoid the needless consumption of time and expense, and
 - 4. protect the witnesses and employees from harassment or undue embarrassment.
- z. The parties and their representatives shall cooperate in keeping all presentations as brief and to the point as possible. Long, drawn-out sessions shall be discouraged. The Commission may establish time limits for presentation of each side of the case.
- AA. All hearings must remain business-like and focus upon resolution of factual matters. Hearings shall not be a time for accusations, threats, speeches, or arguments. The Commission shall have the discretion to adjourn any meeting that deteriorates into non-productive dialogue.
- BB. The Commission shall have the discretion to control the length of time of any particular session as well as the amount of time provided for recesses, breaks, lunch hours, etc.
- CC. Before adjourning, the Commission may adjourn to executive session for deliberation. Thereafter, the Commission shall reconvene in open session and shall,

upon motion and second, make its decision. Thereafter, a written order containing the Commission's decision shall be prepared and signed by the Commissioners prior to adjourning the hearing.

- 53.3** The location and accommodations for all hearings and appeals shall be arranged by the Director.
- 53.4** All subsequent matters by either party regarding attendance, scheduling, requests for subpoenas, requests for continuance, etc. shall be coordinated through the Director. All such information shall be provided to the Director, who shall then provide copies of same to the opposing party or representative, and also coordinate the appropriate response or action to be taken. In a hearing coordinated by an outside agency, that agency shall also provide coordination services between the parties and the hearing examiner in conjunction with the Director's office.
- 53.5** The failure of a party to attend a scheduled appeal hearing, or to file a timely request for a continuance of the hearing to a later date, shall not in itself prevent the hearing from proceeding as scheduled nor prevent the Commission from proceeding to take such action as may be appropriate.
- 53.6** Requests for continuance of a hearing before the Commission to a later date must be filed with the Director at least three (3) business days prior to the date and time of the scheduled hearing.
- a. Requests for continuance must be date(s) specific, and must address the thirty (30) day hearing deadline imposed on Commission decisions as required by Chapter 143 Texas Local Government Code.
 - b. The thirty (30) day Commission decision deadline will be enforced unless the appealing party and Commission can agree on new dates.
- 53.7 Expenses and Costs**
- a. The appropriate amount, as well as payment of, all costs and expenses may be determined and collected by the Director. Generally, the employee will be required to pay for one-half the costs of the hearing examiner and any other fees assessed by the American Arbitration Association (AAA) or any other outside agency. An employee may receive an estimate of anticipated costs upon written request to the Director.
 - b. When applicable, the State law governing the doctrine of "mitigation of damages" will be applied in computing reimbursements or the offset for an award of backpay.
- 53.8 Employee and Department Representatives**
- a. The hearing process shall recognize the right of employees as well as the Department to be represented by one of more persons throughout the proceedings of a disciplinary appeal.
 - b. Only one representative shall be allowed to speak or otherwise present evidence on behalf of either party throughout the questioning of a particular witness.

- c. Employee and Department representatives shall use their best efforts to conclude all proceedings smoothly, expediently, and as fairly as possible to all concerned.
- d. The functions of the representatives shall be to articulate the best interests of the employee or the Department represented, and to make their presentations pertinent to the issue(s) being considered. Dissatisfaction with a representative shall not constitute grounds for modification of a ruling.
- e. All representatives or employees who represent themselves shall become familiar with and follow these rules and regulations at all times during the disciplinary appeal process.
- f. Any problems or concerns regarding the manner in which the opposing party or their representative is handling a particular disciplinary appeal should be brought to the attention of the Director. The difficulty will be expeditiously addressed.

53.9 Exchange of Documentation and Identity of Witnesses

- a. Parties who request photocopies of documents from the opposing party should be accommodated if such requests are reasonable.
- b. Items from departmental policies, rules and regulations manuals may be photocopied upon request and payment of applicable copying charges.
- c. Items such as Vehicle Accident Review Board recommendations, time and attendance records, duty status forms, and other such documents may also be provided so long as they are relevant to the employee and the disciplinary action under appeal.
- d. Employees and their representatives may obtain copies of matters contained in the employee's own personnel and departmental files after the employee has signed the appropriate release form(s).
- e. If the Department calls a witness to testify during a hearing, and that witness has given a statement to the Internal Affairs Division (IAD) regarding the pending case, the Department will supply a copy of that statement to the officer's counsel at the time the witness is called to testify.
- f. Before requesting a subpoena duces tecum for the production of documentation material, a party shall first make a request for the materials directly to the other party and allow a reasonable time for a response. If the request is refused or otherwise not produced, then a request may be made to the Commission to issue the subpoena duces tecum. Requests for subpoenas shall be completed at least ten (10) days prior to the scheduled hearing date in order to be processed in a timely manner.
- g. All requests for subpoenas to compel the attendance of a witness shall be coordinated through the Director's office. Requests for subpoenas shall be completed at least ten (10) days prior to the scheduled hearing date in order to be processed in a timely manner. The Director may issue subpoenas on behalf of the Commission.

53.10 Issues to Be Determined In Disciplinary Appeals

- a. The Department Head must establish the violation(s) by a preponderance of the evidence.
- b. It shall be recognized that, prior to imposing any form of discipline, the Department Head may use lesser forms of disciplinary or corrective action. Failure to use “progressive discipline” shall not in itself be grounds to overturn or otherwise modify a Department Head’s decision to proceed directly to the appropriate level of discipline if the employee’s misconduct warrants such disciplinary action, including indefinite suspension. Progressive discipline need not always apply and the seriousness of a single offense may negate a previously unblemished record.
- c. The hearing shall provide the employee every reasonable opportunity to produce objective evidence and/or testimony to develop:
 1. that the employee did not commit the misconduct as alleged, i.e. “the allegations are not true”; or
 2. that even if the employee committed the acts as alleged, that such activity does not constitute actionable misconduct; or
 3. that even if the employee committed actionable misconduct, the degree of discipline imposed is too harsh or severe, i.e., the disciplinary action imposed was “unreasonable, arbitrary, or capricious”; or
 4. a combination of any of these matter would justify or compel medication of the Department Head’s action.
- d. An employee’s mere disagreement or difference of opinion with regard to the Department Head’s actions or reasoning shall not constitute grounds to overturn or modify the disciplinary action.
- e. Of the hearing establishes one valid charge of misconduct supported by evidence sufficient to establish its truth, that charge shall be sustained even if the evidence at the hearing does not support other charges in the letter of disciplinary action.

53.11 Findings and Orders of the Commission

- a. As a result of the evidence and testimony presented at the hearing, the Commission shall vote and issue a decision on the matter via a written statement finding the truth of the specific charge(s) against the employee, or a written statement finding that the specific charge(s) against the employee are not true.
- b. In the event that all of the charge(s) of misconduct against the employee are found to be “not true”, then the final order and ruling shall be promptly to restore the employee to the employee’s proper position or status without penalty.
- c. In the event that specific charges of misconduct against the employee are found to be “true”, then the final order and ruling shall clearly state whether the employee is:
 1. permanently dismissed from the Department; or
 2. temporarily suspended from the Department, and shall then set forth the definite time period and conditions of suspension which shall be imposed.

- d. In an appeal involving a certified employee of the Police Department, the Commission shall have the authority to impose a disciplinary suspension of any length of time, including a suspension in excess of fifteen (15) days, and time already served between the imposition of discipline and the appeal decision.
 - 1. This rule specifically overrides the judicial limitation imposed on the authority of a Civil Service Commission or Hearing Examiner by the case styled *Waco v. Kelley*, 309 S.W.3d 536 (Tex.2010), which restricts the jurisdiction of the hearing authority to imposing only indefinite suspensions, temporary suspensions of fifteen (15) calendar days or less, or restoring the officer to his or her former position.
 - 2. This rule is not intended to modify any right or privilege of further appeal or appellate review that is otherwise authorized by law to review the decision of a the Commission or a Hearing Examiner.
- e. The final written ruling on all disciplinary appeals shall also include such other matters so as to finally and clearly resolve the issues under consideration, particularly to resolve questions concerning:
 - 1. the employee's resulting employment status;
 - 2. back pay and other employment benefits, and
 - 3. mitigation of damages.
- f. If modifying the disciplinary action of the Department Head, the final order shall clearly explain in writing the factors and rationale for doing so. If affirming the disciplinary action of the Department Head, it shall be presumed to be for the same reasons and facts as presented by the Department Head, unless otherwise indicated.
- g. The Commission may consider matters involving questions of applying Chapter 143 to facts or events that may arise during the disciplinary appeal process, and that are outside the scope of the Department's statement of charges or the employee's notice of appeal, to the extent permitted by law.
- h. The final ruling and order of the Commission may be made by the majority vote of two of the three Commissioners present. If only two Commissioners are present, the final ruling and order must be made in agreement by both Commissioners present.
- i. A copy of the Department's disciplinary action, a copy of the employee's request for appeal, the record of the proceedings, a copy of the exhibits submitted together with a copy of the final decision shall be filed in the Commission record. The Commission may cite these records as reference material in subsequent determinations.

53.12 Employee dissatisfaction resulting from a transfer, assignment, or reassignment of duties, in and of itself, shall not constitute grounds for disciplinary appeal procedures.

53.13 Employee dissatisfaction resulting from a discretionary policy decision or policy matters, in and of itself, shall not constitute grounds for disciplinary appeal procedures.

- 53.14** A Civil Service employee who has voluntarily resigned or retired from Civil Service thereby forfeits all rights to the disciplinary appeal processes, unless the appeal or request for hearing was timely filed prior to retirement or resignation.
- 53.15** A Civil Service employee may voluntarily enter into a written agreement that expressly evidences his or her intent to finally resolve the issue(s) of any type of disciplinary action imposed. The agreement shall also include a statement that the employee waives all rights to further proceedings in the disciplinary appeal process.
- 53.16** A classified employee of the Police Department who receives a suspension of thirty-six (36) hours or less may appeal the suspension solely to the Civil Service Commission. Any suspension of more than thirty-six (36) hours, an indefinite suspension, or a demotion may be appealed to either the Commission or an independent third party Hearing Examiner as provided in Section 143.057 Texas Local Government Code. This right of appeal will be retained for the duration of the term of the Meet and Confer Agreement between the City and the Temple Police Association ratified on October 6, 2016, notwithstanding any change to 143.057 Texas Local Government Code which may occur as a result of court or legislative action during that time.

53.17 Consideration of Appeals of Thirty-Six (36) Hours or Less

The provisions of this Section apply solely to classified members of the Police Department.

1. Disciplinary suspensions of thirty-six (36) hours or less will no longer be considered for purposes of transfer or promotion after twenty-four (24) months have passed from the date the suspension ended, without regard to whether the suspension was appealed.
2. After twenty-four (24) months have passed from the date the suspension ended, the Department Head shall notify the Civil Service Commission in writing. A copy of the notification document shall be included in the Internal Affairs Division (IAD) investigative file, or the file maintained by the Director, whichever is appropriate, and the Department shall enter a notation reflecting this.
3. The Department and the Civil Service Commission will not alter, destroy, conceal, or remove any documents related to the temporary suspension, including by not limited to the notice of temporary suspension that was filed with the Commission as required by Section 143.052(c) Texas Local Government Code, or the IAD investigative file itself. The original suspension documents shall still be subject to open records requests, and as evidence to negate any civil liability claim.

53.18 Appeals to Independent Third Party Hearing Examiners

Disciplinary actions concerning an indefinite suspension, suspension, promotional bypass, or a recommended demotion, except as noted in 53.15, are appealable to independent, third party Hearing Examiners rather than the Commission.

- a. The rule-making power and authority of the Civil Service Commission is in no way conferred upon and/or delegated to any Hearing Examiner, either by implication or otherwise.

- b. In every disciplinary appeal conducted under Chapter 143 of the Texas Local Government Code, the Hearing Examiner shall have the “same duties and powers” as would the Commission, including the right to issue subpoenas to compel the attendance of a witness.
- c. Certified employees of the Fire and Rescue Department and the Department Head, or their designees, shall select a Hearing Examiner pursuant to Section 143.057 (d) Texas Local Government Code.
- d. The Hearing Examiner is to conduct a hearing fairly, objectively and impartially under the provisions of the Chapter 143 of the Texas Local Government Code and these Rules and Regulations. The Hearing Examiner is to render a fair and just decision based solely on the evidence presented in the hearing. The scope of evidence to be considered at the hearing shall be generally limited to matters closely related and relevant to the charges of misconduct as set forth in the department’s written statement and the employee’s notice of appeal as filed with the Commission, as well as the appealing party’s previous employment record with the department.
- e. The Texas Rules of Civil Procedure, the Texas Rules of Criminal Procedure, the Texas Rules of Evidence, and all other rules of court regarding what is commonly known as “discovery” shall not apply to any civil service proceedings.
- f. The burden of proof shall be by a preponderance of the evidence.
- g. All hearings conducted by Hearing Examiners shall also be recorded so as to be capable of clear and accurate reproduction or transcription. The Director will coordinate with the Hearing Examiner for use of City property for this purpose.
- h. After the close of evidence and testimony, and Hearing Examiner may deliberate and thereafter enter the ruling either in the same manner as the Commission, or as per Chapter 143 of the Texas Local Government Code.

53.19 Appeal Procedures Before Hearing Examiners for Certified Employees of the Police Department

- a. The employee and the Department, or their designees, shall select a hearing examiner:
 - 1. By agreement no later than ten (10) business days from the date the officer’s notice of appeal is filed with the Director, or
 - 2. From a list of seven (7) Hearing Examiners provided by the American Arbitration Association. The director will request the list within ten (10) business days of receipt of the officer’s appeal, and will send the list by email to the officer or officer’s counsel and counsel for the Department within ten (10) business days of receipt.
 - i. Selection from the list of Hearing Examiner names will be initiated by the officer or officer’s counsel by striking the first name from the list within ten (10) business days of receipt of the list from the Director.

- ii. Failure by the officer or officer's counsel to initiate selection of the Hearing Examiner by making the initial strike within ten (10) business days of receipt of the list from the Director shall be deemed a withdrawal of the officer's appeal.
- b. The Department shall furnish the charge letter to the Hearing Examiner by delivering a copy far enough in advance so that the Hearing Examiner receives the copy at least five (5) business days prior to the start of the hearing.
- c. The officer may furnish a position statement to the Hearing Examiner by delivering copies to the Hearing Examiner and the Department far enough in advance so that the Hearing Examiner and Department receive the copies at least five (5) business days prior to the start of the hearing.
- d. If the Department calls a witness to testify during a hearing, and that witness has given a statement to the Internal Affairs Division (IAD) regarding the pending case, the Department will supply a copy of that statement to the officer's counsel at the time the witness is called to testify.
- e. At the close of the hearing, the Hearing Examiner shall render a decision within thirty (30) business days.
- f. Closing briefs will only be allowed by mutual agreement of the Parties, and shall be sent simultaneously to both the Hearing Examiner and the opposing side using the same mutually agreed method.
- g. Expenses –
 1. The Department and the officer shall equally share the expenses associated with the Hearing Examiner.
 2. The cost of an expert witness or any other witness not employed by the City is to be paid by the party that subpoenas the witness.
 3. The cost of a court reporter shall be paid by the party requesting the reporter.
 4. In the event the officer is not a member of an association, and is responsible for his or her share of any fees, the officer shall deposit with the Director his or her share of the fees three (3) days prior to the Hearing Examiner's deadline to cancel. Failure to deposit the funds shall result in the appeal being dropped. In the event that the fees exceed the amount deposited, the officer shall pay the remaining amount due within thirty (30) days of receipt of the bill, or authorize the City to deduct the amount due from his or her next four (4) paychecks.
- h. Jurisdiction of Hearing Authority to Modify Discipline
 1. In addition to the authority provided by Section 143.053 of the Texas Local Government Code, a Hearing Examiner shall have the authority to impose a disciplinary suspension of any length of time, including a suspension in excess of fifteen (15) days, and time already served between the imposition of discipline and the appeal decision.

2. This rule is intended to override the judicial limitation imposed on the authority of a Civil Service Commission or Hearing Examiner by the case styled *Waco v. Kelley*, 309 S.W.3d 536 (Tex.2010), which restricts the jurisdiction of the hearing authority to imposing only indefinite suspensions, temporary suspensions of fifteen (15) calendar days or less, or restoring the officer to his or her former position.
3. This rule is not intended to modify any right or privilege of further appeal or appellate review that is otherwise authorized by law to review the decision of the Hearing Examiner or Commission.

SECTION 54-56 (RESERVED)

SECTION 57. HEARING EXAMINERS

57.01 The Hearing Examiner must conduct the hearing in the same manner as the Civil Service Commission. The Hearing Examiner cannot modify the rules or the procedures of an appeal hearing.

SECTION 58-72 (RESERVED)

SECTION 73. LINE OF DUTY ILLNESS OR INJURY LEAVE OF ABSENCE

- 73.1** A police officer or fire fighter who retires, or is separated from service, as a direct or proximate result of a personal injury or illness sustained in the line of duty shall retain the same level of health care insurance benefits as the officer received while on active duty for a period not to exceed one (1) year commensurate with his or her injury or illness as allowed in Chapter 143.073 of the Local Government Code.
- 73.2** The City of Temple Workers' Compensation Review Board will review "line of duty" injuries and illnesses, and make recommendations to the City Manager for approval by the City Council for continuation of health insurance coverage beyond the one (1) year required under Chapter 143.073 of the Local Government Code.

SECTION 74. (RESERVED)

SECTION 75. MILITARY LEAVE TIME ACCOUNTS

- 75.1** The City of Temple will maintain separate military leave time accounts for the Police Department and the Fire Department.
- 75.2** The military leave time account will benefit a fire fighter or police officer who:
- a. is a member of the Texas National Guard or the armed forces reserves of the United States;
 - b. was called to active federal military duty while serving as a fire fighter or police officer for the City of Temple, and
 - c. has served on active duty for a period of 3 continuous months or longer.
- 75.3** A fire fighter or police officer may donate any amount of accumulated vacation, holiday, sick, or compensatory leave time to the military leave time account in that fire fighter's or police

officer's department to help provide salary continuation for fire fighters or police officers who qualify as eligible beneficiaries of the account under 75.2.

- 75.4** A fire fighter or police officer who wishes to donate time to an account under this section must authorize the donation in writing on the form provided by the Fire or Police Department and approved by the City.
- 75.5** The City will distribute the leave time donated to a military leave time account among all fire fighters or police officers who are eligible beneficiaries of that account.
- 75.6** The City will credit and debit the applicable military leave time account on an hourly basis regardless of the cash value of the time donated or used.
- 75.7** A fire fighter or police officer who qualifies under 75.2 can use donated military leave time in the number of hours that will provide the difference in his military salary and his City salary when comparing base salary he or she was receiving at the City to the base pay he or she receives on military duty.
- 75.8** A fire fighter or police officer who qualifies as an eligible beneficiary of the account under 75.2 will only receive continuation pay if there are hours in the military leave time account.
- 75.9** A police officer who wishes to use military leave from the military leave time account shall submit the request in writing.
- 75.10** In December of each year, the City will provide a report to the Temple Police Association that includes the current balance of the military leave time account and the amount of leave used by each police officer from the account during the previous year.

SECTION 76-80 (RESERVED)

SECTION 81. FITNESS FOR DUTY

- 81.1** All employees must continually remain in such physical and mental condition as to be capable of rendering safe and efficient services to the City, and performance of the duties and essential functions of the appropriate Department.
- 81.2** All employees will be required to submit to a psychological or physical examination where there exists some reasonable basis to believe that the individual's mental or physical fitness for duty is an issue. Determination of the employee's mental or physical fitness for duty shall not be subject to Commission or Hearing Examiner review.
- 81.3** Submission of a report ordered pursuant to Section 143.081(b) of the Texas Local Government Code.

When a fire fighter or police officer has been ordered to submit to an examination by his or her personal physician, psychologist or psychiatrist to determine fitness for duty the following rules apply:

- a. the fire fighter or police officer will submit the report or have his or her physician, psychiatrist, or psychologist submit the report ordered to the Civil Service Commission within a reasonable time, but not later than 14 calendar days from the date the order is given;

- b. the fire fighter or police officer shall execute a release of medical information authorizing the Director, the Commission, the City Attorney, and the Department Head, to receive the report and any supporting documentation;
- c. the fire fighter or police officer shall pay the cost of the services of his or her physician, psychiatrist, or psychologist, as appropriate.
- d. the report is deemed received by the Civil Service Commission, as required under Section 143.081(b), when filed with the Director; and
- e. upon receipt of the report by the Director, the report shall be forwarded to the Commission.

81.4 Questioning the Report:

When the fire fighter, police officer, Commission, or Department Head questions the report, pursuant to Section 143.081(c) of the Local Government Code, the following rules apply:

- a. the challenge must be in writing and be delivered to the Director in person, by certified mail, by e-mail, or by fax;
- b. a letter, memo, or affidavit challenging the report, is deemed received when filed with the Director not later than 10 calendar days from the day the report is received by the Director. The report may not be challenged after this time.
- c. The Commission shall appoint a physician, psychiatrist, or psychologist, as appropriate, to examine the fire fighter or police officer and to submit a report to the Commission.
- d. The City shall pay the cost of the appointed professional's services.

81.5 Board of Three:

- a. If the report of the professional appointed by the Commission pursuant to 81.2 disagrees with the report of the fire fighter's or police officer's professional, the Commission shall appoint a three-member board composed of a physician, psychiatrist, or psychologist, or any combination, as appropriate, to examine the fire fighter or police officer.
- b. The Board's findings as to the person's fitness for duty shall determine the issue.
- c. The City shall pay the cost of the services of the Board.